



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Meeting Minutes Planning Commission

Wednesday, June 12, 2019

6:00 PM

Council Chambers

1. Call To Order

The Harrisonburg Planning Commission held its regular meeting on Wednesday, June 12, 2019 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

2. Roll Call/Determination of Quorum

Members present: Mark Finks; Brent Finnegan; Zanetta Ford-Byrd; Sal Romero; Kathy Whitten; and Gil Colman, Vice Chair.

Members absent: Henry Way, Chair.

Also present: Adam Fletcher, Director of Planning and Community Development; Wesley Russ, Assistant City Attorney; Thanh Dang, Assistant Director of Planning and Community Development; Alison Banks, Senior Planner; and Nyrma Soffel, Administrative Assistant.

There was a quorum with six of seven members in attendance.

Present 6 - Gil Colman, Brent Finnegan, Mark Finks, Kathy Whitten, Zanetta Ford-Byrd, and Sal Romero

Absent 1 - Henry Way

3. Approval of Minutes

Vice Chair Colman asked if there were any corrections, comments, or a motion regarding the May 8, 2019 Planning Commission minutes.

Commissioner Finks moved to approve the minutes as presented.

Commissioner Finnegan seconded the motion.

All members voted in favor of approving the May 8, 2019 Planning Commission minutes, as presented (6-0).

A motion was made by Commissioner

Present 6 - Gil Colman, Brent Finnegan, Mark Finks, Kathy Whitten, Zanetta Ford-Byrd, and Sal Romero

Absent 1 - Henry Way

3.a. Minutes from May 8, 2019 Planning Commission Meeting

Attachments: [Minutes](#)

4. New Business - Public Hearings

- 4.a. Consider Planning Commission's approval of new high school site as substantially in accord with the Comprehensive Plan as provided by Virginia Code Section 15.2-2232.

Attachments: Memorandum

Extract

Site Maps

Virginia State Code 15.2-2232 Commission Findings High School

Title Survey

Proposed New Harrisonburg High School Concept Plan – dated May 31, 2019

Southbury Station Proffers and Plan of Development – dated May 2010

Code of Virginia 15.2-2232. Legal Status of Plan

PowerPoint presentation

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that she would review the first two items on the agenda, items 4.a. and 4.b. together. They are both related to the location of the Harrisonburg City Public Schools proposed new high school, located off of East Kaylor Park Drive. It is a 60-acre site adjacent to I-81. I recommend that one public hearing be opened for both items. The votes, however, would be taken separately for each item. The first item is to determine if the public facility is in substantial accord with the Comprehensive Plan as provided in the Virginia Code section 15.2-2232. The second public hearing item is a request to rezone the 60-acre property from R-5C High Density Residential Conditional to B-2, General Business District.

The Comprehensive Plan designates this area as Governmental/Quasi-Governmental. These lands include properties owned or leased by the City of Harrisonburg, the Commonwealth of Virginia, the federal government, and other governmental/quasi-governmental organizations. Examples of entities included in this category are City Hall, City administrative and support facilities, Harrisonburg City Public Schools, James Madison University, Rockingham County Administrative Offices, Rockingham County Public Schools, and the Massanutten Regional Library. Properties within this designation may already include uses supplied by the entities mentioned or are planned to be used by such public entities for any type of uses necessary for their services. Some Governmental/Quasi-Governmental uses, such as James Madison University, other state agencies, and the federal government are not subject to some of the City's land use regulations. City parks are included in the Conservation, Recreation, and Open Space Category. Furthermore, it should be understood that properties that are owned or leased by the City, which may not be designated as Governmental/Quasi-Governmental by the Land Use Guide, may be developed with public uses, as defined by the Zoning Ordinance, to operate and provide services supplied by the City in any zoning district, which as of the approval of the 2018 Comprehensive Plan, is every zoning district in the City.

The following land uses are located on and adjacent to the property:

- Site: Undeveloped parcels, zoned R-5C
- North: Self-storage units, zoned M-1
- East: Across Interstate 81, Ramblewood Park, zoned R-1; and a manufacturing facility, zoned M-1
- South: East Kaylor Park Drive and undeveloped parcels, zoned B-2
- West: Undeveloped parcels, automobile dealership, offices, and commercial uses, zoned B-2

Last summer, City Council and the School Board jointly announced the purchase of +/- 60 acres of land for the next high school. The land is adjacent to I-81 between Boxwood Court and East Kaylor Park Drive. With the hope of having the new high school open by Fall 2023, Harrisonburg City Public Schools (HCPS) continues to work with engineers and architects regarding the engineered layout and design of the new building. As part of the vetting process for this new public facility, the site requires a review by the Planning Commission (PC) to determine if the facility is in substantial accord with the Comprehensive Plan. Additionally, as a separate request, the City is requesting a rezoning of the property from R-5C, High Density Residential District to B-2, General Business District.

City staff has been working with HCPS regarding site design matters. A traffic impact analysis (TIA) study is currently underway. Typically, a TIA is completed prior to accepting and reviewing rezoning applications. However, staff is comfortable reviewing the rezoning request given that the City and HCPS will be working closely on the new high school project.

Presently, as illustrated on the Proposed New Harrisonburg High School Concept Plan - dated May 31, 2019, a new public street is proposed to run along the western boundary of the site to connect East Kaylor Park Drive to relocated Boxwood Court across from Pointe Drive, offering two routes to access the school site from South Main Street. City staff and HCPS staff are working on entrance layouts and routes into the school site to keep buses and parents dropping-off and picking-up students separated.

The Concept Plan illustrates the proposed location of the new high school building, parking areas, and recreational fields. It should be noted that prior to approval of the engineered comprehensive site plan, Planning Commission must review and approve the number of off-street parking spaces desired for the site. Per Section 10-3-25(12) of the Zoning Ordinance (ZO), "proposed off-street parking spaces shall be programmed by the applicable school authorities as necessary to meet state standards for use and consideration of site locations, then submitted to the planning commission for comprehensive site plan review."

The Department of Public Utilities has noted that while the demands for water and sanitary sewer services of the proposed school would be substantially different from those generated by the current zoning, it is their preliminary opinion that the existing utilities would supply the needed demand. A more detailed review is currently underway.

15.2-2232 Review

City Code Section 10-1-6 stipulates that "if a public facility subject to Section 15.2-2232 of the Code of Virginia is not already shown on the comprehensive plan, the planning commission shall determine whether the location, character and extent of such public facility is in substantial accord with the comprehensive plan as provided by Section 15.2-2232 of the Code of Virginia and the

terms and conditions set forth herein, and may be amended from time to time.” A copy of Section 15.2-2232 is attached.

As a reminder, the Code of Virginia Section 15.2-2232, among other things, states that when a locality has adopted a comprehensive plan, “it shall control the general or approximate location, character and extent of each feature shown on the plan.” Public buildings or public structures, among others, are listed by the Code as features that unless are already shown on the plan “shall not be constructed, established, or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof.”

As previously stated, the Comprehensive Plan’s Land Use Guide designates this property as Governmental/Quasi-Governmental, a designation that was established with the 2018 Comprehensive Plan update. When the 2018 Comprehensive Plan update process began in early 2017, this +/- 60-acre site was owned by James Madison University who had purchased the property in 2014. In Fall 2017, after several Comprehensive Plan advisory committee meetings, the property was shown on the draft Land Use Guide map as Governmental/Quasi-Governmental. This was presented during the Fall 2017 public workshops and public comment period. The draft Land Use Guide map continued to show the property as being recommended as Governmental/Quasi-Governmental and plans to locate the new high school at this site were known when the Comprehensive Plan was adopted in November 2018.

All the sites adjacent to this property, on the west side of Interstate 81 are designated and planned for commercial uses. A request is also being made to rezone the site to B-2, General Business District, where educational uses are permitted by right.

Staff finds the proposed new high school site’s general location, character, and extent thereof is in substantial accord with the Comprehensive Plan and recommends the Commission communicate the same findings to City Council.

Vice Chair Colman asked if there were any questions for staff.

Commissioner Finnegan said that although it is a conceptual site plan, not one that is proffered, I am curious as to why the parking lot is massed in the front, as opposed to the back closer to the interstate.

Ms. Dang said that she is not able to answer that question.

Commissioner Romero said that one of the arguments is that the administrative offices are going to be at the front of the building, so the parking is located there to allow people to see who is coming in and out. The location of the parking lot in the front makes it easier for administrative staff to acknowledge the visitors that are coming into the building.

Commissioner Whitten said that she was concerned with the effect of noise from the interstate.

Commissioner Romero said that acoustic studies are being conducted.

Commissioner Whitten said that in early discussions regarding the school, the athletic fields would not be included. I am curious as to why they are here.

Commissioner Romero said that he does not have an answer. There is a lot of discussion that will continue regarding the entire facility, the entire campus.

Commissioner Finnegan said that he was at a presentation at Thomas Harrison Middle School, three weeks ago, about this from the architects. It appears that there are many things that are undecided. I do not know if there will be a need to bus students to and from the current high

school on Garbers Church Road for curriculum or other reasons. Has the staff spoken with the school staff regarding the midday traffic and transportation issues? Is there going to be a TIA for that?

Ms. Dang said no, the TIA studies only look at the peak hour demand. The biggest impact would be in the morning hours. It does not look at the traffic impact for the rest of the day. If there was programming generating traffic during the day, it would not be included in the TIA; but could be part of the conversation between City staff and the school administrators. To my knowledge there have not been any decisions made regarding the programming or how it would be split between both schools.

Commissioner Romero said that there would be a meeting in the next few days, that will be fairly lengthy, of the design committee that will be making those decision. That will allow us to know what direction we will be heading in. At this point, there are a lot of unknowns.

Commissioner Finnegan said that if only morning and evening peak hours are considered, they will also create peak hours when school lets out. It would be a different kind of peak hour, but traffic would be created entering and exiting the school.

Ms. Dang said that “peak hours” means the peak hour of the traffic system, not of the use throughout the day. The morning hours of the school match the peak hours of the South Main Street traffic.

Hearing no further questions or discussion regarding the review, Ms. Dang continued and discussed the rezoning request

Commissioner Finks moved to send a positive recommendation to City Council that the public facility is in substantial accord with the Comprehensive Plan.

Commissioner Finnegan seconded the motion.

All members voted in favor of the recommendation. The recommendation for approval of the Planning Commission’s findings regarding the 15.2-2232 review will move forward to City Council on July 9, 2019.

- 4.b.** Consider a request from the City of Harrisonburg to rezone a +/- 60 acre site located adjacent to I-81 and between Boxwood Court and East Kaylor Park Drive from R-5C, High Density Residential Conditional to B-2, General Business District.

Attachments: [Memorandum](#)

[Extract](#)

[Site Maps](#)

[Title Survey](#)

[Proposed New Harrisonburg High School Concept Plan – dated May 31, 2019](#)

[Southbury Station Proffers and Plan of Development – dated May 2010](#)

[Surrounding property owners notice](#)

[Public Hearing notice](#)

[PowerPoint presentation](#)

The site is currently zoned R-5C, High Density Residential District Conditional. A public hearing on this zoning was held by City Council on June 22, 2010 and the rezoning became effective on

July 14, 2010. A copy of the proffered conditions and the plan of development is attached for reference. The site also received a special use permit (SUP) at the same time that allows each residential building within the plan of development to exceed twelve units per building, as shown on the plan of development, per Section 10-3-55.4(1) of the ZO. The SUP remains valid until July 1, 2020. In brief, the site was approved for a density of 466 dwelling units and the proposed plan anticipated a mix of one, two, and four-bedroom units.

The details of this development are very specific for the housing development as proposed in 2010 and would not allow the construction of a high school at this site. For example, the first proffer states that roadway, parking, and building configurations within the development shall be in substantial conformance to the provided plan of development.

Earlier this year, HCPSs sought city staff's advice and accepted staff's recommendation to rezone the site to the B-2, General Business District. This rezoning would remove all the proffers associated with the R-5C zoning designation that was approved in 2010. A B-2 zoning designation would match existing surrounding Commercial land use designations as shown in the Comprehensive Plan's Land Use Guide. Rezoning to B-2 would also allow the proposed use (high school) as a by right use per Section 10-3-95(5) of the B-2 district regulations. Educational uses are not listed as a use permitted by right or by SUP within the R-5 district. Additionally, rezoning to B-2 would provide more flexibility with setback and height regulations, as compared to other zoning districts where educational uses are allowed.

City staff recommends approval of the rezoning request from R-5C to B-2.

Vice Chair Colman asked if there were any questions for staff. Hearing none, he opened the public hearing for both the 2232 review and for the rezoning request and asked if there was anyone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks said that he is concerned about the location because strategy 7.2.2 of the Comprehensive Plan states that consideration should be given to make schools accessible to pedestrian and bicycle traffic. I understand the limited options in finding 60 acres of land to purchase for a high school. I believe the fact that the Bluestone Trail will pass through there will help, but I do worry that it will be difficult for bicyclists and pedestrians to reach this school. The location will have to be accessed by buses or cars. That will not preclude us from saying that this does go along with the Comprehensive Plan, but I do want to note what we included as a strategy in the Comprehensive Plan. In the future, I hope that when we are looking at properties that do not require 60 acres for future schools that we are able to put new schools in areas that are more accessible to pedestrians and bicyclists.

Commissioner Finnegan said that he shares the concern with the walkability to the school. There is a neighborhood on the other side of South Main Street, behind what is called the "motor mile," that is residential. What is the possibility of building a pedestrian walkway over South Main Street at some point in the future? The area could become denser. In the area, there are several large parking lots with no cars in them. Some of the businesses have closed. The way that area of town currently looks, with car dealerships and empty parking lots, it could, in 20 years, look very different. I hope it does look very different.

Vice Chair Colman said that this is related with how we review, revise or change our Comprehensive Plan. Right now, the use and the need are there, but as time moves on, with a

school there perhaps it will become more residential. I support the idea that, ideally, we would have a school within a neighborhood that is accessible to pedestrians, and not next to a busy road. The flip side of that is that for a school that is going to produce so much traffic it is good to have a road that will be able to handle it. There are pros and cons to the location. We should consider both conditions, both situations, when we consider a school in the future. We should be conscious of those factors. We are limited by how much property is available for a school of this size.

Commissioner Finnegan said that we do have an emergency crowding situation in Harrisonburg High School. Under those circumstances, the fact the City cannot annex into the County, the fact that there are very limited options, I would be in favor of this request.

Commissioner Finks said he has heard that people are concerned about traffic in the area during certain parts of the day. It made me think about the traffic study for City, where the blocking points were and where the traffic is almost completely in red such Port Republic Road, Reservoir Street, and West Market Street, areas that are heavily trafficked. Of all the areas that have heavy traffic, South Main Street is not as bad as some of the others.

Commissioner Whitten asked if there were bicycle lanes or sidewalks on South Main Street.

Ms. Dang said that there not any on that section of South Main Street.

Mr. Fletcher said that staff reviewed a number of sites. There were advantages and disadvantages to the different sites. The points you are making were made during that process and were communicated to the City Manager's office to share with the School Board, not just regarding the site preparation, but the surrounding facilities as well.

Vice Chair Colman said that the City should take on building sidewalks on South Main Street to the school. It would improve walkability and access.

Commissioner Finnegan moved to recommend approval of the rezoning request.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the rezoning request.

Commissioner Finks moved to send a positive recommendation to City Council that the public facility is in substantial accord with the Comprehensive Plan.

Commissioner Finnegan seconded the motion.

All members voted in favor of the recommendation. The recommendation for approval of the rezoning request and the Planning Commission's findings regarding the 15.2-2232 review will move forward to City Council on July 9, 2019.

Commissioner Finnegan moved to recommend approval of the rezoning request.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the rezoning request.

- 4.c.** Consider a request from Bismarck LLC for a special use permit to allow manufacturing, processing and assembly operations at 325, 335, 357, and 394 North Liberty Street.

Attachments: [Memorandum](#)
[Extract](#)
[Site Maps](#)
[Application, applicant letter, and supporting documents](#)
[Surrounding property owners notice](#)
[Public Hearing notice](#)
[PowerPoint presentation](#)

Vice Chair Colman recused himself from this agenda item due to a conflict of interest. Commissioner Whitten chaired the meeting in his absence.

Commissioner Whitten read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Mixed Use. The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

The following land uses are located on and adjacent to the property:

Site: Vacant commercial building; zoned B-1C
North: Private parking lot; zoned B-1C
East: Across North Liberty Street, vacant commercial building; zoned B-1C
South: Multi-family residential use; zoned M-1
West: Single-family and duplex dwellings fronting Collicello Street; zoned R-2

The applicant’s representative, Sage Bird LLC, is requesting a special use permit (SUP) per Section 10-3-85 (1) of the Zoning Ordinance, to allow a manufacturing and processing use within the B-1, Central Business District. If approved, Sage Bird LLC is proposing to operate Sage Bird Ciderworks at 325 North Liberty Street. Per the requirements of the SUP, no more than 15 employees can work on a single shift and all storage and activities associated with the manufacturing use must be conducted within a building.

For reference, the subject site, along with several other properties to the north and east, were rezoned by the property owner, Bismarck LLC, in November 2018, from M-1 to B-1C, to allow for a proposed mixed use development of commercial and residential uses. As part of the rezoning, proffers were submitted by the property owner, which included that all special use permits (SUPs) shall be permitted as approved by City Council. Also, the applicant proffered that at minimum, seven parking spaces shall be located on the parcels associated with this SUP

request and that such parking spaces shall be reserved for the sole use of supplying off-street parking spaces for any and all uses that are located on the parcels. Additionally, the property owner proffered 22 parking spaces to be located on the southwest corner of North Liberty Street and Gay Street. These 22 parking spaces shall be reserved for the sole purpose of supplying off-street parking spaces for any and all uses that are located on the properties in connection with the rezoning request.

With the proposed SUP request, the applicant describes that a cidery will be situated within 1,800+/- square feet of the existing building on the site. The production portion of the cidery will encompass about 1,000 square feet and will operate generally between 7 a.m. and 7 p.m. The applicant describes that noise production created from processing will be minimal, consisting mainly of electrical motor sounds produced by pumps and cooling systems, which the applicant describes as “used extensively in beer production and do not cause a noticeable increase in outside noise disturbance.” There would be a minimal aroma of apples or other fruit as well. Deliveries will occur no more than four times a month, generally during apple season (August through March) and will be received through the large bay door at the front of the production space. Sage Bird Ciderworks intends to self-distribute the processed bottles and kegs of cider, eliminating any bulk pick-up of cider produced on-site.

Along with processing and bottling the cider, the applicant intends to have an indoor tasting room and proposes small outdoor spaces in the front and rear of the building. At this time, they plan to operate the tasting room during afternoons and evenings on Wednesday through Sunday. A conceptual floor plan submitted by the applicant shows the cidery production area, tasting room, and outdoor seating areas. If approved, the applicant will need to work closely with staff to ensure that there is enough space between the existing building and the front property line to accommodate both the proffered parking and the proposed outdoor area.

The applicant has been informed that they will need to work with the Building Inspections Division regarding Building Code requirements and all necessary permits. Furthermore, a minor subdivision will be required to vacate the existing interior property lines on the site, prior to any building permits being approved.

Staff believes the proposed cidery use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living and working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the special use permit without any conditions.

Commissioner Whitten asked if there were any questions for staff.

Commissioner Finnegan asked if the limit of fifteen employees per shift is related to the maximum occupancy of the building.

Ms. Banks said that is the limit for manufacturing in the B-1 zoning. It is a small-scale manufacturing limit.

Commissioner Whitten asked how many shifts there would be.

Ms. Banks said that they planned to be open from 7:00 a.m. to 7:00 p.m. The applicant would have to answer any questions regarding the shifts.

Commissioner Whitten opened the public hearing and invited the applicant to speak to the request.

Zach Carlson, owner of Sagebird, LLC, 325 North Liberty Street, came forward to speak to the request. I am opening Sagebird Ciderworks at this location. I would have no more than fifteen employees. I would be doing most of the production work. I may have two or three people working in the tasking room at a time. Generally, I would not have more than five staff at a time. There would be a production time during the day, from 7:00 a.m. to 7:00 p.m. On the weekend, we may be open later for tasting room hours. You could consider that two shifts.

Commissioner Finks expressed his concern that the SUP would convey if the property were sold. The back of the property, where you propose to have tables for people who may be drinking, backs up to a residential neighborhood. Although you do not intend to be open past midnight, a future owner has the potential to allow the property to become a nuisance. Do you have any comments?

Mr. Carlson said that he wants to be a good neighbor. Behind the space, there is a rock wall that goes up to the residential properties. That rock wall provides an acoustic barrier. It is also not easily scalable. The natural features of the land, the building and the fencing on either side will keep people within the property. Those natural features also insulate against noise.

Commissioner Finks said that he thought the rock wall and the building would create an echo effect.

Mr. Carlson said that it does not. It is not a sheer cliff face. It is made up of some boulders and trees. We intend to have some ivy and other vegetation for aesthetic purposes which should also help acoustically, as well.

Commissioner Romero asked if Mr. Carlson has spoken with the neighbors.

Mr. Carlson said that he has not.

Ms. Banks said that staff has not received any comments from the neighboring properties.

Commissioner Ford-Byrd asked if Mr. Carlson has any idea of how he plans to lay out the proposed outdoor area in the front and the required parking.

Mr. Carlson said that he intends to have a six- or seven-foot patio space in the front and a bay door, similar to what Pale Fire Brewery has, but smaller. We understand that the parking needs to be there, and that accessible parking needs to be there. I will be using about two-thirds of the building. There is an additional third of the building that will be available for parking in the front. It would not be directly in front of our business, but next to it.

Commissioner Whitten asked if there would be musical events.

Mr. Carlson said that the expectation is to allow people to gather and talk. While there might be music, loud music would interfere with conversation. Any music would be tasteful.

Commissioner Whitten asked if there was anyone else wishing to speak to the request. Hearing none, she closed the public hearing and opened the matter for discussion.

Commissioner Finks said that his only concern had been the effect on the residential neighborhood behind the property, however, he is comfortable with the responses from the applicant.

Mr. Fletcher said that restaurants are permitted by right on these properties. They could do the same things, no questions asked.

Commissioner Finnegan asked how late a restaurant could remain open. Is there a noise restriction?

Mr. Fletcher said that he would have to look it up in the Noise Ordinance in the City Code.

Mr. Russ said that Alcohol and Beverage Control does require breweries and cideries to close

earlier. Restaurants can be open 24 hours. If alcohol is being served you cannot. I do not recall at what hour they have to close.

Commissioner Finks said that if alcohol is being served that is not brewed on site it is 2:00 a.m. I think the breweries have to close at midnight or around that time.

Commissioner Whitten asked if the 1,800 gross square feet is for the entire cidery.

Ms. Banks answered yes.

Commissioner Finnegan said that these are vacant buildings and we have had these requests come in before for this area and across the street. I move to recommend approval of the SUP as presented.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the SUP as presented. The recommendation for approval will move forward to City Council on July 9, 2019.

Vice Chair Colman recused himself from this agenda item due to a conflict of interest.

Commissioner Finnegan made a motion to recommend approval of the SUP as presented.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the SUP as presented. The recommendation for approval will move forward to City Council on July 9, 2019.

No: 0

Absent: 1 - Way

- 4.d.** Consider a request from Henry P. Deyerle, Trustee to rezone a property located at 60 Carpenter Lane property from B-2, General Business District to M-1, General Industrial District.

Attachments: [Memorandum](#)

[Extract](#)

[Site maps](#)

[Application, applicant letter, and supporting documents](#)

[Surrounding property owners notice](#)

[Public Hearing notice](#)

[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Industrial. These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.

The following land uses are located on and adjacent to the property:

Site: Undeveloped acreage; zoned B-2

North: Manufacturing/warehouse use; zoned M-1

East: Furniture warehouse and sales, zoned B-2 and undeveloped acreage; zoned M-1

South: Across Carpenter Lane, recreational use, storage facility, and undeveloped parcels; zoned B-2

West: Non-conforming multi-family dwelling, non-conforming storage of manufactured/mobile homes, and undeveloped acreage; zoned B-2

The applicant is requesting to rezone an undeveloped 5.05 +/- acre parcel from B-2, General Business District to M-1, General Industrial District in order to construct a 47,000 square foot warehouse/storage building on the site. The acreage is located in the southern part of the City, along the northern side of Carpenter Lane.

The submitted conceptual site plan, which is not proffered, demonstrates the entire parcel being utilized. Initially, the applicant plans to construct only the parking lot and use it for the storage of over the road tractor trailers. The construction of the warehouse/storage building will be a future phase of the development. The B-2 zoning district allows for standalone privately owned parking lots as a by right use; however, it does not allow for the storage of over the road tractor trailers. Warehousing and other storage facilities are allowed only by special use permit within the B-2 district. The M-1 zoning district allows standalone privately owned parking lots, warehousing and storage, and storage of over the road tractor trailers as by right uses.

The proposed parking lot will be required to meet all parking lot landscaping requirements as per Section 10-3-30.1 of the Zoning Ordinance. Given the size of the parking lot phase of the development, it will require review and approval of an engineered comprehensive site plan (ECSP) prior to construction. During the ECSP review, issues such as landscaping, setbacks, stormwater management, and street entrances will be reviewed. It should be noted that even if the parking lot is constructed smaller in size and does not go through the ECSP review, it must still meet all parking lot landscaping requirements.

As noted above, the Comprehensive Plan designates this area as Industrial, a land use designation which it received upon annexation in to the City in 1983. These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. The proposed rezoning is supported by the Comprehensive Plan's Land Use Guide.

Staff recommends approving the rezoning from B-2, General Business District to M-1, General Industrial District.

Vice Chair Colman asked if there were any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Petr Borodin said that he would like to develop the property and use it as a business. I want to be able to park trucks on the property. I hope you grant the rezoning request.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten moved to recommend approval the rezoning request as presented.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the rezoning request as presented. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Whitten moved to recommend approval the rezoning request as presented.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the rezoning request as presented. The recommendation will move forward to City Council on July 9, 2019.

- 4.e. Consider Zoning Ordinance Amendments to Modify Civil Penalties (Section 10-3-13) and Remove Registration Requirements for Short-Term Rentals (Section 10-3-204).

Attachments: [Memorandum](#)

[Extract](#)

[Proposed zoning ordinance amendments](#)

[Public Hearing notice](#)

[Surrounding property owners notice](#)

[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that on March 26, 2019, City Council adopted new Zoning Ordinance regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.”

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019. Therefore, while staff has sent notices to property owners who have been identified as operating a STR without an approved SUP, no violations will be issued until August 1.

Staff proposes two amendments related to short-term rental (STR) regulations. The first is to amend the Zoning Ordinance (ZO) Section 10-3-13 Penalties and the second is to remove the requirements for STR operators to annually register the use and pay a registration fee as currently described in Section 10-3-204.

Section 10-3-13 Penalties specifies the penalties for violations of the ZO. Currently, this section states that operating a STR in violation of Section 10-3-205 shall be punishable by a civil penalty. Section 10-3-205 currently reads as follows:

Sec. 10-3-205. - General regulations.

- (1) Lodging contracts shall be limited to a period of fewer than 30 consecutive nights.
- (2) Any food service offered shall be limited to guests.
- (3) Short term rentals shall have the dates for trash and recycling collection posted prominently.
- (4) Short term rentals shall not be marketed and used for weddings, receptions, or events, unless approved, and as may be conditioned during the special use permit process.
- (5) Operators shall comply with the Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code.

The proposed amendment would eliminate the reference to Section 10-3-205 and replace it with

the phrase “the Zoning Ordinance” so that any STR operating in violation of the ZO, including, but not limited to, operating without an approved SUP, not providing the required minimum off-street parking requirements, and not meeting conditions placed on the approved SUP shall all be punishable by a civil penalty. Section 10-3-13(2)a.i. would be amended as follows:

Operating a short-term rental in violation of ~~Section 10-3-205~~ [the Zoning Ordinance](#).

The second amendment proposed by staff is to remove all of Section 10-3-204, which is associated with the registration of the STR operation. Presently, Section 10-3-204 requires STR operators to annually register the use and to pay an annual registration fee of \$50. One of the initial reasons for establishing the annual registration process was to track and maintain the number of legally operating STRs in the City. Since the City’s STR regulations ended up requiring that all STR operators obtain a one-time SUP for properties on which they want to operate, and because STR operators are required to obtain an annual business license from the Commissioner of Revenue’s Office, staff believes future inquiries into the number of legally operating STRs can be gathered through existing processes and systems and that an annual registration is not necessary. Had the ordinance allowed some type of STR operation as a by right use, a \$50 registration fee would have been an appropriate amount to require to track and maintain such files.

Staff recommends in favor of the Zoning Ordinance amendment as presented.

Vice Chair Colman asked if there any questions for staff.

Commissioner Finnegan said that line (7) states that “[a]ny person, firm, or corporation found in violation of any provision of this chapter, upon conviction shall be guilty of a class 1 misdemeanor, unless designated as a civil penalty under subsection (2).” Can you describe what conditions would trigger a class 1 misdemeanor?

Mr. Russ said that any violation of any ordinance, that does not explicitly say otherwise, is a class 1 misdemeanor. In zoning ordinances, unless we specify that we have civil penalties, the only enforcement mechanism is the class 1 misdemeanor.

Vice Chair Colman opened the public hearing and asked if there was anyone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten moved to recommend approval of the zoning ordinance amendment as presented.

Commissioner Ford-Byrd seconded the motion.

All members voted in favor of recommending approval of the zoning ordinance amendment. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Whitten moved to recommend approval of the zoning ordinance amendment as presented.

Commissioner Ford-Byrd seconded the motion.

All members voted in favor of recommending approval of the zoning ordinance amendment. The recommendation will move forward to City Council on July 9, 2019.

- 4.f.** Consider a request from Michael White and Susan Crosby for a special use permit per Section 10-3-48.4 (2) to allow for a short-term rental on a 19,500 +/- square feet parcel at 1220 Ivy Lane and identified as tax map parcel 50-B-17.

Attachments: [Memorandum](#)
[Extract](#)
[Site Maps](#)
[Application, applicant letter, and supporting documents](#)
[Surrounding property owners notice.](#)
[Pubic Hearing Notice](#)
[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that she would first present some of the common conditions that will be repeated in all the presentations. When we discuss each STR request, Ms. Banks and I will highlight the conditions that are unique to the requests and the staff recommendations.

The common condition last month was that all STR accommodations shall be within the principal structure. This condition is suggested to be applied to the STR to prevent someone from constructing an external structure for the purpose of lodging people in that space as that has not been vetted as part of this process. The assumption, at this point in time, is that the requests have been for accommodation spaces within the principal buildings. That is what is being reviewed. This condition would keep those accommodation spaces within the principal structure.

We had suggested that prior to beginning operations building codes and fire inspectors would have the opportunity to enter the buildings and inspect the accommodation spaces and the means of egress to ensure compliance with the building and fire codes. We are suggesting amending that language on all requests. This amendment was presented to City Council yesterday evening when three of the STR applications which you received and reviewed last month were forwarded to City Council. Striking out that text that is currently in your staff report, we are suggesting this alternative prior to beginning operations: "The operator shall submit to city staff a completed short-term rental pre-operation form. Furthermore, the operator shall maintain compliance with the pre-operation form when the short-term rental guests are present." A copy of a draft STR pre-operation form was placed before you tonight, to show that applicants will be self-certifying. As we continued working with building codes and fire officials and the City Attorney's office it became very complicated to have the staff entering the buildings limit themselves to only inspecting the accommodation spaces and means of egress. In an effort to protect the property owner's interests when having their spaces inspected, we have come up with this alternative. This form would have to be completed and submitted to city staff prior to beginning operations. There are ten items listed that would be checked, such as addresses posted outside, smoke detectors installed in the accommodation spaces, fire extinguishers, egress windows, etc. We expect to have this posted on the City website, on the STR webpage, by tomorrow so that applicants may begin using it to ensure that they are in compliance. The form would be kept on file with the STR SUP documents.

Commissioner Romero asked if the form will be filled out once or on an annual basis.

Ms. Dang responded that it would be filled out once. It is an opportunity for an awareness that all their accommodation spaces should meet these expectations and they have to certify that they do. If they change their accommodation spaces, the new spaces will still have to meet this, but we will not be requesting that a new form be completed.

Mr. Fletcher said that the Fire Department continues to have concerns about safety. This is a positive, but it is not perfect.

Commissioner Whitten asked what the concerns of the Fire Chief are?

Mr. Fletcher said that it is a combination of multiple issues, knowing that the professionals on staff know what they are looking for and know how to interpret these codes. We read these building codes and have interpretations trying to discern the intent, but they are quite complicated. What does it mean to have an egress window and an exit door? A person might look at this might believe that they have a suitable window, but it might not meet the dimensional requirements. Even if they meet the dimensional requirement, it can still be confusing.

Vice Chair Colman said that this form makes it easier for the applicants. If the building officials or fire officials were to visit the property, they might identify other things that need to be taken care of that are beyond the SUP. This makes it more accessible than having a building official come in and want you to redo your whole house.

Ms. Dang continued, other common conditions are regarding minimum off-street parking spaces. The off-street parking regulations requires one off-street parking space for every accommodation space or as conditioned otherwise. You will see two options. One is that no minimum parking be required. We have recommended this in situation where there may not be an ability to add parking spaces, their driveway is small and cannot accommodate it, or it is not advisable to require additional spaces to be built on the property in order to retain the residential character of the property. The option is that minimum off-street parking spaces do not need to be delineated and can be accommodated using the driveway and other areas of the property. Generally, these are properties that have a large driveway and have enough space, but we do not want them to have to line the spaces or mark them with blocks.

Finally, the general conditions that if the STR becomes a nuisance, the Planning Commission or City Council would have the ability to recall, review and consider revocation of the SUP.

The first STR to consider today is 1220 Ivy Lane. The Comprehensive Plan designates this area as Medium Density Residential. These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling, zoned R-3

North: Single-family detached dwelling, zoned R-3

East: Across College Avenue, multi-family dwellings, zoned R-3

South: Across Ivy Lane, single-family detached dwelling, zoned R-3

West: Single-family detached dwelling, zoned R-3

The applicants are requesting approval of a short-term (STR) operation at 1220 Ivy Lane, located on the northwest corner of Ivy Lane and College Avenue. The property is located in the northwest section of the City about 0.3-miles from Buttonwood Court, where Harmony Square is located, which is a shopping center that fronts on Virginia Avenue. The property is also located about 0.25-miles from Eastern Mennonite University's campus and Park View Mennonite

Church's property is about 200-ft from site with the church entrance about 600-ft. away.

The applicant desires to rent for STR three accommodation spaces; two bedrooms in the basement of their home and a third bedroom on the second floor. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation spaces could accommodate up to five STR guests. The applicants describe that the property is their primary residence and that they plan to be present during the lodging period.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to "provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit." With a request to rent for STR three accommodation spaces, the property should provide three off-street parking spaces. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling unit. The property has two driveways and parking areas; one that is accessed from Ivy Lane and another that is accessed from College Avenue. The applicants have explained that lodgers using the basement will park their vehicles in the driveway accessed from College Avenue, and lodgers using the single room will park their vehicles in the driveway in front of the house on Ivy Lane. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

If the request is approved, staff recommends the following conditions:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than three STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to five.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects neighbors by ensuring that there is on-site accountability by the STR operators. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to three. ("Accommodation spaces" means any room offered for sleeping. This would not include living

spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of STR guests to not more than five. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress.

Additionally, it appears that the basement was finished without obtaining building permits. The applicant is aware that a building permit and final inspection will be required by Building Code Officials prior to their inspection of guest rooms and accommodation spaces and means of egress.

Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Given the nature of the request, location of the property, and staff's suggested conditions, staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff recommends approval of the special use permit request with the suggested conditions.

Commissioner Finnegan asked if there was any discussion of condition number two requiring that an "operator shall be present during the lodging period" during the site tour. I share the staff's concern that the site should be the operator's primary residence, however I am not convinced that the operator being present during the lodging period ensures accountability.

Commissioner Finks said they did discuss that during the site tour and agrees that having the operator on site will not necessarily provide accountability. If you have an operator that is unable to confront the renters, for physical or other reasons, their accountability will not matter. The police may still have to be called. A cell phone is going to be as accountable as the operator being on the property if there are complaints or issues with neighbors.

Commissioner Finnegan said that the accountability comes from the site being the operator's primary residence. If someone is going out of town for the weekend, they cannot rent their home over the weekend because they are not going to be on site. If the applicant has no objection to the condition, then we can do it. If someone has an objection, I would be inclined to removing that requirement.

Vice Chair Colman said we did discuss this issue. There is a difference between a property owner and an operator. The operator could be someone who lives there but is not the owner. Something we discussed was to adjust that condition so that if the property owner is the operator, then the operator does not need to be present. If the operator is not the owner, then having the operator in place is important to protect the property. If allowing for the operator to not be present, then

anyone could buy up properties and use them as STRs and that affects the availability of homes.

Commissioner Finks presented the following hypothetical situation: If a family bought a house that they intend to use as an STR, and they establish it as their child's primary residence by receiving their mail, registering their car and registering to vote at that location, however, the child still lives at home with the parents. It is still the operator's primary residence on paper, but they would never be there. So, if we completely took out "operator shall be present during the lodging period", the operator may not be using the property as their primary residence. On the other hand, there is a lot of accountability built into Airbnb sites. There is a rating system that is used. If there are scenarios where a renter is creating serious issues, it will affect their ability to continue using these sites.

Commissioner Whitten said a simple Google search will show that there are many problems with STRs. If we are trying to protect neighborhoods, we need to be as careful as we can about how these homes are being used. That is our due diligence.

Commissioner Finks said our other due diligence is to make sure that people are able to use their property in a way that benefits the area.

Commissioner Whitten said that should be as long as it does not adversely impact the neighborhood.

Commissioner Finks said that is why we have added these conditions.

Vice Chair Colman said these conditions are conditions that staff brought to the Planning Commission to recommend to City Council. We can recommend our own conditions. The conditions reflect our past discussions. I agree that the requirement to have the operator on site should not be necessary if the property is the primary residence of the owner.

Ms. Dang said perhaps condition two may be revised to say, "if the operator is not the property owner, then the operator shall be present during the lodging period." Do you want to keep it as is, amend the condition or remove the condition?

Commissioner Ford-Byrd asked for clarification. Commissioner Finnegan, are you saying that either owner or operator should not be bound to the property if the person were utilizing the property as their primary residence? I do not see where we are addressing your concern with the proposed revision.

Ms. Dang said the suggestion addresses Vice Chair Colman's suggestion. Commissioner Finnegan, are you suggesting removal of condition two entirely?

Commissioner Finnegan said for this particular SUP, the applicant does not have an objection to condition number two, so I would leave it as is. I am leaving the door open to removing or amending it for future requests.

Vice Chair Colman said the applicant should speak to that. They might prefer to remove it or have the alternative that I proposed. My intention with the revision I proposed would be to have it as a blanket condition for all applications.

Commissioner Romero asked if staff has received calls from residents that are looking to apply who state that the process is confusing. I think the language is still confusing. What does "operator or owner present during the lodging period" mean? Do people have questions about that? Does present mean during the entire time that the property is rented or only at the time that the keys are handed in?

Ms. Dang said the question has come up. The expectation of "being present" is that the operator

is sleeping there and spending time there. It means they have not left town. When we say “operator” it may apply to the property owner or long-term tenant who has permission from the property owner to operate a STR.

Vice Chair Colman said if anyone goes to an Airbnb, would they want the operator to be in the house, or would they rather have the house to themselves?

Commissioner Whitten said she has stayed in both those situations and both were fine. It varies based on the property.

Commissioner Finks said that the preference often is related to the layout of the property. Sleeping down the hallway from the operator and sharing a bathroom may not be as comfortable as staying in a separate living space.

Vice Chair Colman opened the public hearing and invited the applicant or applicant’s representative to speak to the request.

Hillary Dorzweiler, daughter of Michael White and Susan Crosby, 1220 Ivy Lane, came forward to speak to the request. My father is school bus driver. They are now in South Carolina visiting family. They have agreed with the staff’s suggestions. I think that they added the condition in question about being on site after meeting with Ms. Dang. It was recommended, and they agreed in order to comply with staff’s suggestions. Currently, a friend who is working in the area temporarily is staying with them. If they had an Airbnb, I could envision them becoming comfortable with a repeat customer and might want to allow them to stay when they are not there. I do not think that they are going to object if you believe it is important to keep the condition.

Vice Chair Colman asked the applicant’s representative if she suggests that the condition be removed.

Ms. Dorzweiler answered yes.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none he closed the public hearing and opened the matter for discussion.

Commissioner Finks asked staff if an operator can only be a renter or the property owner.

Ms. Dang answered yes. It applies to someone for whom the property is a primary residence, not an agent.

Commissioner Whitten said that helps to not encourage people to buy houses and then having someone else responsible.

Mr. Fletcher said condition number one requires that the property be the operator’s primary residence.

Vice Chair Colman said that Planning Commission can remove condition two if they feel comfortable with it.

Commissioner Whitten asked if the neighbors that have seen this advertised would feel the same way if they knew. They have the option to come tonight and disagree with the SUP, but they also thought that it was going to include someone being present. Have we not substantively changed the SUP by removing that condition?

Ms. Dang said that the advertisement as written does not provide the specific conditions. The staff report was posted on Friday with the suggested conditions. People know that you are making a recommendation. There is another opportunity to address concerns at City Council.

Commissioner Finnegan moved to recommend approval of the SUP, and to remove condition two while retaining the remaining conditions.

Commissioner Finks seconded the motion.

All members voted in favor of the SUP with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Finnegan moved to recommend approval of the SUP, and to remove condition two while retaining the remaining conditions.

Commissioner Finks seconded the motion.

All members voted in favor of the SUP with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

- 4.g.** Consider a request from Craig Goeller, Jr. for a special use permit per Section 10-3-34 (7) to allow for a short-term rental at the 12,000 +/- square feet property addressed as 150 East Fairview Avenue and identified as tax map parcel 18-N-2.

Attachments: [Memorandum](#)

[Extract](#)

[Site Maps](#)

[Application, applicant letter, and supporting documents](#)

[Pubic Hearing Notice](#)

[Surrounding property owners notice](#)

[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Low Density Residential. These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling, zoned R-1

North: Single-family detached dwelling, zoned R-1

East: Single-family detached dwelling, zoned R-1

South: Single-family detached dwelling, zoned R-1

West: Single-family detached dwelling, zoned R-1

The applicant is requesting approval of a short-term rental (STR) operation at 150 East Fairview Avenue, which is located approximately 600-ft. from Port Republic Road, approximately 700-ft. from South Main Street, and approximately 800-ft. from James Madison University. The applicant desires to rent for STR three accommodation spaces in their home that could accommodate a total of six individuals. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they plan to be present during the lodging period.

This neighborhood has brown zone parking and a parking pass is required for vehicles parking

on-street at all times. Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent for STR three accommodation spaces, the property should provide three off-street parking spaces. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling unit. The property has a driveway that can accommodate up to four vehicles. The applicant explained to staff that during lodging periods STR guests would park in the driveway, and the applicant would park on the street in front of their home. Regardless, staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

If the request is approved, staff recommends the following conditions:

1. The site shall be the operator’s primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than three STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to six.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City’s housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects neighbors by ensuring that there is on-site accountability by the STR operators. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to three. Condition #5 limits the total number of STR guests to not more than six. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained his plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet

the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Given the nature of the request, location of the property, and staff's suggested conditions, staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff recommends approval of the special use permit request with the suggested conditions.

Vice Chair Colman asked if there are any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Craig Goeller, Jr., 150 East Fairview Avenue, came forward to speak to the request.

Commissioner Finnegan asked if Mr. Goeller has spoken with his neighbors regarding the request.

Mr. Goeller said that he has.

Vice Chair Colman asked if the applicant had any concerns with the conditions presented.

Mr. Goeller said he does not. He accepts condition two.

Commissioner Whitten asked if the applicant has guest parking passes.

Mr. Goeller said that he does, however he has stickers on his own vehicles and intends to move those to the street when he has guests.

Panayotis Giannakaouros, city resident, came forward to say that this treatment of condition two strikes me as having a peculiar logic. If it is optional, if people can opt in or out of it, it should be removed. Otherwise, people may feel pressured to accept it in the hopes that their SUP request will be approved. It creates an expectation that is not grounded on an actual need. Let people have it without condition two.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Ford-Byrd moved to approve the SUP with conditions, as presented.

Commissioner Finnegan seconded the motion.

All members voted in favor of the SUP with conditions, as presented. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Ford-Byrd moved to approve the SUP with conditions, as presented.

Commissioner Finnegan seconded the motion.

All members voted in favor of the SUP with conditions, as presented. The recommendation will move forward to City Council on July 9, 2019.

- 4.h.** Consider a request from Nicholas and Abigail Einstein for a special use permit per Section 10-3-40(8) for a short-term rental on the 3,920 +/- square feet property at 58 Easthampton Court and identified as tax map parcel 10-M-2A

Attachments: [Memorandum](#)
[Extract](#)
[Site Maps](#)
[Application, applicants letter, and supporting documents](#)
[Pubic Hearing Notice](#)
[Surrounding property owners notice](#)
[8 STR 58 Easthampton .pptx](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Low Density Residential. These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Duplex dwelling unit; zoned R-2
North: Multi-family dwelling units; zoned R-3
East: Duplex dwelling unit; zoned R-2
South: Across Easthampton Court, duplex dwelling units; zoned R-2
West: Duplex dwelling unit; zoned R-2

The applicants are requesting approval of a STR operation at 58 Easthampton Court; which is located in the southwestern section of the City. The subject property is one half of a duplex building that has frontage within a cul-de-sac. The applicants describe the property as their primary residence and desire to rent for STR an open basement accommodation space, which they refer to as an “in-law quarters” and includes a bed and a blow-up mattress, for a maximum of four guests at a time. The accommodation space has access through the home, as well as an exterior separate entrance at the back of the dwelling unit. The applicants do plan to be present during the lodging period.

While the property is only +/- 0.12 miles from Central Avenue, a minor collector street and +/- 0.26 miles from South Avenue, a major collector street, staff believes it is located too interior to the neighborhood. It is unlikely that the cul-de-sac street would have pedestrian and vehicular traffic that is not from relatives or friends of the applicants or neighbors who live on Easthampton Court and their visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips.

Staff believes that STRs should not negatively impact a community or an individual’s quality of life or to an individual’s often biggest investment: their home and property. Given the location of the property within this residential area of the City, staff believes a business operation of this nature should not be promoted at this location and further believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval to City Council, staff recommends the following conditions be placed on the SUP:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principle dwelling.
4. There shall be no more than one STR guest rooms or accommodation spaces.
5. The number of guests at one time shall be limited to four.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway and parking area on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects the neighbors by ensuring that there is on-site accountability with operators being present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to one. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of guests to four. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. Additionally, it appears that the basement was finished without obtaining building permits. The applicant is aware that a building permit and final inspection will be required by Building Code Officials prior to their inspection of guest rooms and accommodation spaces and means of egress.

Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to "provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit." With a request to rent one accommodation space within the dwelling for STR, the property would be required to provide one off-street parking space unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. The duplex currently has five off-street parking spaces; two for each dwelling unit and one shared parking space with the adjoining dwelling unit. Regardless, staff believes that if the request is approved, the applicant

should be provided the flexibility to meet the off-street parking requirements by allowing STR guests to park on the existing driveway without delineating parking spaces

Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Vice Chair Colman asked if there are any questions for staff.

Commissioner Whitten said that she drove to the sites on Sunday afternoon around 4:00 or 5:00 p.m. That parking lot was jam packed with vehicles. Some vehicles were double parked. I would say that there are some serious parking issues there. The parking in front of the home was full, and the entire cul-de-sac was full.

Commissioner Finks asked how many bedrooms the apartments on Vale Circle had. Since adding traffic is a concern, I want to know how many units are on Vale Circle.

Ms. Banks said she did not know how many bedrooms the apartments on Vale Circle had, but they were only concerned with the traffic on the Easthampton Court cul-de-sac.

Mr. Fletcher said some surprising and concerning information he learned the previous night was that there is a perception that when we are making a recommendation for denial of requests deep within neighborhood, there might be an elitist perception. It never entered our consciousness to think that way. I was glad to hear that perspective and learn how it is being perceived. We are trying to balance what it means to preserve neighborhoods. One of the commissioners talked about that threshold and how far do you go in limiting STRs in neighborhoods. There is no right answer, so I want it out in the public realm so that it can be discussed. It is about that difficult decision and we have talked about what it means to preserve neighborhoods and protect neighborhoods. We are a college town and we get concerns about over-occupancy. When you have more occupants in a space it is a de facto overoccupancy of what the underlying zoning district is. I want us to keep that in mind. I do not want people to feel that we are trying to be elitist. Every neighborhood has its own culture and expectations. It is a balancing act of trying to figure that out.

Vice Chair Colman said that the issue is equity. Why some would have the opportunity to have STRs while others do not. When we recommended the STR Ordinance to City Council there was the homestay by right option and the option of the STRs by SUP. City Council approved the STR by SUP only version. My intent was that STRs would be allowed, but with the opportunity for city staff and for neighbors to voice any concerns. Not to establish a matrix of where we can or cannot have an STR, but to allow them. If there are issues, the neighbors would complain and, if the concerns were valid, we would have the option to terminate the SUP. It was not to limit the use throughout the City, but to open it up and allow the neighbors to speak.

Commissioner Finnegan said the question is, are we going to approve STRs in a traditional neighborhood development on a grid but deny STR on cul-de-sacs?

Commissioner Whitten said it is case by case.

Commissioner Finks said we have been trending towards denying those on the cul-de-sacs.

Commissioner Romero said this STR would have up to four occupants. This would typically be a family or at most two cars. I know this neighborhood because I visit families here for my job. There is some movement happening in those cul-de-sacs. There are a lot of families that live there. It would be in the best interest of the property owners to provide those two parking spaces in front of their home to allow for the renters to use them and they may find parking elsewhere.

Commissioner Whitten said that on Sunday afternoon there were not two extra spaces.

Commissioner Romero said that he is sure there was something going on Sunday. It is typically busy, but not as busy as you experienced on Sunday. I do not see the impact on the neighborhood.

Commissioner Finks said he has family that lives near Southampton. I see many cars in and out of Vale Circle and Central Avenue. Has it already impacted the neighborhood at this point?

Commissioner Finnegan said there are deeper philosophical questions regarding property rights. Do renters get to have a say? Is it only property owners? Do your property rights end at your property line? We are making certain assumptions in general. We assume that in a residential neighborhood you should be able to find parking close to your house. We may be entering a period with density increasing where you do not necessarily find parking in front of your house. When I visit friends in other cities, I have no expectation of finding parking within three blocks of their house. I have lived downtown and had to carry groceries three blocks. We spend a lot of time talking about parking. I am leaning towards not factoring in the parking in this particular request.

Commissioner Whitten said why do we not throw out all of the conditions. Let us not have any conditions at all. In a neighborhood where people live closely together, there are top issues: noise, trash and parking.

Commissioner Finnegan asked are those the three top issues for you?

Commissioner Whitten said that it was across the board. Trash does not get put out on the right day. Trash is on the street. Too much trash, etc. Same thing with parking. We got the blue, brown, red, purple zones in Harrisonburg because of parking. It is a problem. It is a point of friction and a point of pressure. Density leads to all of those things. While you think that is not a big deal in a small cul-de-sac, there is a thing called a domino effect. If you start adding people and cars to an already dense place, you are going to have problems.

Commissioner Finks said condition eight exists to remedy problems that may come up.

Commissioner Whitten asked Mr. Russ if it is simple to take away a SUP by using condition eight.

Mr. Russ said that it is not something that has been tried. I do not know how much push back there would be. I have no idea what a judge would say if there were an appeal.

Commissioner Finks asked if they should strike condition eight, if it will be ineffective.

Mr. Fletcher said the fact that it has not been tried does not mean that it would be ineffective.

Vice Chair Colman said condition eight concerns would be managed by the Planning Commission and City Council. In some of these requests, we have neighbors speaking up. We voted against the SUP where the neighbors spoke up. There is an opportunity for the neighbors to speak up. It is advertised and posted on the property. I understand that if it is a rental situation, some people might not feel free to speak up, however, they should. I do not think we have anyone that has spoken against this request up to now. If there are concerns, then we can consider imposing additional conditions or deny the request.

Commissioner Finnegan said if we approve this request, does everyone else on that cul-de-sac have equal opportunity to do the same thing with their house?

Vice Chair Colman said at this point we do not have a measure to approve any particular number of STRs or to whom they are granted. It becomes unfair and potentially illegal. We need to be careful. That is not a reason for us to deny a request.

Vice Chair Colman opened the public hearing and invited the applicant to speak to the request.

Nicholas and Abigail Einstein, 58 Easthampton Court, came forward to speak to their request.

Mr. Einstein said they are happy to be compliant with all the regulations that legalize STR in Harrisonburg. We do not see why the location of our house prevents us from operating a STR. We have three main points that were identified in staff's report that we will discuss.

Ms. Einstein said that when you live in a cul-de-sac, you know what you are dealing with. We have friends that come, and if we have a lot of people come to our home, people can park down the street. There is a lot of space before coming up the hill. We have had friends park down the hill for our neighbors' benefit. We have two cars. They fit in one spot. For the STR, we have a spot that is just for them. I do not know what the situation was on Sunday, but typically that is not a problem for us. Our neighbors have kids, and they have a lot of cars. We understand that. We live on a cul-de-sac.

The first main concern we identified from the staff comments was that our home was too interior to a neighborhood. Last night, City Council approved the SUP for 981 Summit Avenue which was over a mile from a major collector street. Our home is only 0.26 miles from South Avenue. We recognize that distance is not the only factor that you are considering, however, similar to that neighborhood, we have visitors to our street. It is a great first-time homebuyer neighborhood. It is close to the center of town. People come up our street.

The second concern is that it might introduce a high turn-over of people who are unknown to the neighbors. The property that is behind us is Grand Duke, which is an R-3 complex which is accessed right off our main street. There are cars that come up our street. In addition, one of our neighbors on our cul-de-sac operates a small business from his house. On the weekends, his employees come to pick up checks: it creates vehicle traffic. It does not bother us. He is our neighbor. We do not see the difference between that situation and a car occasionally coming up the block for a STR.

Mr. Einstein said the third point was that the STR would have adverse effects on other residents in our neighborhood. The character of our neighborhood cannot be defined by looking at a zoning map. We live there. We understand it. We love our neighborhood. We bought there. It is our first home. It is a family oriented and culturally diverse neighborhood. Everyone works hard for what they have. We can see that with our direct neighbor as well as the neighbors across the street. We have regular open communication, especially with our two direct neighbors, the one with whom we share our building and the one with whom we share the property line. Both have voiced no concern at all. We have talked with them and they appreciate the value that we are bringing to the neighborhood.

The transient occupancy tax money that the City collects from the STR can then be reinvested into the community to address parking issues. We also promote local businesses and restaurants. We have no issues with the eight conditions.

Mark Scott, owner of 55 and 57 Easthampton Court, came forward to speak against the request.

My wife and I purchased that property because we wanted to be in the community. A community that supported close knit neighbors. It must have limited traffic because it is a short cul-de-sac with limited parking. It is not in close proximity to any business or commercial enterprises. We wanted a sense of community without so much commercialism. Even though steps are to be taken to screen renters, we have read and heard of incidents where this type of thing has eroded that sense of community due to increased traffic, noise, disrespect for neighboring properties, other situations. There are many kids playing on Easthampton Court. When there is no school, there are many children. People who do not live on a cul-de-sac may not understand that there will many children and that they will have to be careful. We have seen speeding, which the police are now monitoring in other locations. We oppose the issuance of any SUP for STR on Easthampton Court anywhere.

Commissioner Finks asked if the property was his primary residence.

Mr. Scott said that it is not his primary residence. They did not move there.

Commissioner Finnegan asked what Mr. Scott meant by “screening renters”.

Mr. Scott said there are supposed to be vetting processes for people who rent. We have known of situations where those vetting process were met without the desirable results that were intended.

Commissioner Finnegan asked if he meant through the sites, such as Airbnb.

Mr. Scott said yes.

Barbara Weirich, owner of 62 Easthampton Court, came forward to speak in favor of the request. I own the adjacent building to the applicants. I do not live there, we rent it to our adult children. We are not opposed to the STR. Their building has the best parking in the entire cul-de-sac. They said they can park in one spot is because it is deep enough that they can have two vehicles in one spot. They already have a nice spot reserved for the guest. Our concern with the cul-de-sac has to do with the other buildings and the double and triple parking. It is horrible and is not due to STR. It is the double families, or too many renters in the house. When we purchased the property and knew the zoning, we could not rent to more than two unrelated people because of the two cars parking only. There are probably many rules broken due to the parking, and it is into the street. I do not think that STR is a problem. Their building is the best one. I give them credit for the property and the preparations that they have made already. It is difficult for first time homeowners.

Mr. Giannakaouros came forward. I was surprised to hear the word “elitist” come from Mr. Fletcher, the Director of Community Development. I was present and participating in the discussion to which he referred, and the term was “exclusionary”. That is a technical term in zoning and it relates to creating situations that make property inaccessible in such a way that leads to de facto segregation. Segregation is about race, which is correlated with other things that can be selected for, that then lead to de facto segregation. If we look at the Weldon Cooper map of Harrisonburg, we see that our neighborhoods are very segregated. When you find the neighborhoods with large lots, far away from collector streets, it ends up collecting blue dots. That is the concern that I heard being expressed by people on City Council.

Mr. Fletcher said that he had a conversation with someone else today who used the word “elitist”. I was not doing a direct quote. It was a term that was used in a conversation with me today.

Commissioner Whitten said the comments should remain on topic.

Vice Chair Colman said that the concern is valid. We want to try to stay away from it being exclusive from certain groups of people or certain groups of housing. That is what concerns me in terms of equity.

Ms. Einstein said that she is sorry for Mr. Scott’s concerns, however, he does not live on the block. We cannot control speeding. I do not believe that a STR has anything to do with speeding on the block. I am from Queens, New York. I grew up in the city. I played in a street. I can assure you that cars will not stop a child playing in the street. There are long-term rentals on our block that produce more traffic because you have someone coming to and from work, whereas a STR is not going to be rented out every night. We are not going to have cars there every single night. We do not want to upset anyone in our neighborhood, but we do feel it is unnecessarily preemptive.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks moved to recommend approval of the SUP, as presented.

Commissioner Finnegan seconded the motion.

Vice Chair Colman called for a roll call vote on the motion.

Commissioner Romero: Aye

Commissioner Finks: Aye

Commissioner Whitten: No

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: Aye

Vice Chair Colman: Aye

The motion to recommend approval of the SUP, as presented, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Commissioner Finks moved to recommend approval of the SUP, as presented.

Commissioner Finnegan seconded the motion.

Vice Chair Colman called for a roll call vote on the motion.

Commissioner Romero: Aye

Commissioner Finks: Aye

Commissioner Whitten: No

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: Aye

Vice Chair Colman: Aye

The motion to recommend approval of the SUP, as presented, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Yes: 5 - Colman, Finnegan, Finks, Ford-Byrd and Romero

No: 1 - Whitten

Absent: 1 - Way

- 4.i. Consider a request from Becky Bartells for a special use permit per Section 10-3-40 (8) to allow for a short-term rental on the 4,740 +/- property located at 406 Collicello Street and identified as tax map parcel 34-C-6.

Attachments: [Memorandum](#)
[Extract](#)
[Site Maps](#)
[Application, applicant letter and supporting documents](#)
[Pubic Hearing Notice](#)
[Surrounding property owners notice](#)
[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling, zoned R-2
North: Single-family detached dwelling, zoned R-2
East: Non-conforming, multi-family dwelling, zoned M-1
South: Across West Gay Street, non-conforming, multi-family dwelling, zoned R-2
West: Across Collicello Street, single-family detached dwelling, zoned R-2

The applicant is requesting approval of a short-term rental (STR) operation at 406 Collicello Street, which is located on the northeast corner at the intersection of Collicello Street and West Gay Street. The applicant desires to rent for STR throughout the year one accommodation space in their home that could accommodate two persons and to rent for STR for one week in May every year the entire single-family dwelling, which has three accommodation spaces, to a family of up to five persons. (“Accommodation space” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and will be present during the lodging period when only the one accommodation space is rented for STR. The applicant would not be present during the one week in May when the entire single-family dwelling is rented for STR. The applicant has explained to staff that they plan to remain in the City, close to downtown, during the one week in May.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent for STR three accommodation spaces during the one week in May, the property should provide three off-street parking spaces. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units.

The subject property is 4,737 square feet in size and has no accommodations for off-street parking. On-street parking is restricted along West Gay Street and within twenty-feet of the

corner along Collicello Street. The applicant states in their letter that STR guests would park their vehicle on the street in front of the house. Collicello Street is not restricted by permit parking and given the suggested conditions that limits STR to one family at a time, staff is comfortable conditioning that the minimum off-street parking for the STR would not be required.

If the request is approved, staff recommends the following conditions:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period, except for one week in May of each year.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than one STR guest room or accommodation space, except for one week in May when the operator may rent the entire home with up to three accommodation spaces.
5. The number of STR guests at one time shall be limited to two, except during one week in May when the operator may rent the entire house to a family of up to five persons.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. The STR has no minimum off-street parking requirements.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects the neighbors by ensuring that there is on-site accountability with operators being present during the lodging period. Staff does not believe the one week in May, where the operator will not be present during the lodging period, would cause a disruption to this neighborhood. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to one, except for one week in May when the entire house could be rented with up to three accommodation spaces. Condition #5 limits the total number of guests at one time to two, except for one week in May when the entire house could be rented to a family of not more than five persons. Condition #6, requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. Condition #7 provides flexibility for the property owner to maintain the residential appearance of the property by not requiring them to create parking spaces. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property

owners. If the applicant were to sell the property, then future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

As noted above, the property is located at the intersection of Collicello Street and West Gay Street and is within close proximity to the downtown area. This segment of West Gay Street is an arterial street and receives a high volume of traffic. It is clear that this section of this residential neighborhood experiences pedestrian and vehicular traffic that is not generated from the residents of the street or their relatives and friends. Staff believes that from a traffic perspective, allowing a STR at this location would have very limited impact. Given the nature of the request, location of the property within the neighborhood, and staff's suggested conditions, staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff recommends approval of the special use permit request with the suggested conditions.

Vice Chair Colman asked if there any questions for staff.

Commissioner Finnegan said the request is very specific, and it will transfer to the next property owner, with the stipulation about May.

Ms. Banks said the applicant wanted to ensure that they would be able to have guests at some point in May for graduations. From an enforcement standpoint, a week would be defined as seven days. As written, if the graduation weekend spanned the end of April, the rental would not be able to begin until May. If a new owner wished to amend the condition, they would have to restart the SUP process.

Commissioner Finnegan said that the Planning Commission could amend the condition.

Vice Chair Colman asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Becky Bartells, 406 Collicello Street, came forward to speak to the request. We could say graduation weekend. I simply want to be able to rent out my space for those few days. I would be open to talking about condition two. I do plan to be present. It is my home. I can deduce who I trust to stay alone or not, based on the safety of my house and my belongings. That said, I am happy to be there. As the very first applicant stated, that her parents may choose to trust someone to stay in their home, after spending some time with them, if I have someone staying for three days and they are solid, I might be willing to leave my house in their care. That seems reasonable to me. I would be happy to make it less restrictive. I will do whatever I need to do.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks said he does share the concern that taking condition two off of some requests and not others might not be equitable.

Commissioner Ford-Byrd said that she shares Commissioner Finks' concern. I am trying to find a way to be consistent in my thinking. As we discussed during the tours, we are also learning as things come up that have not been considered.

Commissioner Finks said if we were to consider removing condition two, would that require amending condition five?

Ms. Dang said it would not. Condition five is only related to the number people who may stay. I would encourage you to consider the consistency in how you apply the conditions. Perhaps regardless what the applicants are telling you, if they want to self-impose something that is on them. Be consistent in your thinking on why it is important to recommend the condition.

Commissioner Whitten said if we allow an applicant to strike it, everyone is going to strike. They do not want to say they have to be there if they do not.

Commissioner Finks said that he does not see the need for condition two. I am not on board with having to apply condition two on anyone.

Commissioner Finnegan said that he agrees with Commissioner Finks on that item.

Vice Chair Colman said that he agreed, as well.

Commissioner Finks said if that is the consensus, then why do we not strike condition two on a consistent basis, except when it is not operator owned?

Vice Chair Colman said that we need to consider each individually. We need to maintain consistency of thought, but not necessarily strike it across the board. Each request is an independent SUP.

Ms. Dang said if you strike condition two, it does not address the concern of “operator owned” because if the applicant were to sell the property, that person would rent it to a tenant. I recommend not to strike it if you want to achieve something differently. The suggested language is: “If the operator is not the property owner, then the operator shall be present during the lodging period.”

Commissioner Romero said we are getting too caught up with the specificity of this particular item, as if we were going to be monitoring in such a way that we would be able to see what everyone is doing. Whether someone says a week or other time period, I am not so concerned with number two. At the end of the day, the monitoring piece is something that I am still unsure as to how we are going to do it. I think that will be the key. If there is an issue, we will know about it. Otherwise, we will not know if they are following the conditions. What I am saying is that the one week in May condition is trivial. It should not make a difference.

Commissioner Whitten said that we would not want to leave the number of people open. Zoning is about being specific for a reason because there has to be a bar. There is always going to be someone who is not going to play with the rules.

Vice Chair Colman said he does not see why limit the rental. If it is the primary residence, then should have a whole house rental whenever they want.

Commissioner Finks said the ability, or not, of staff being able to enforce whether they are only renting it in May only reinforces the idea that we should amend it to if an operator is not the owner then the operator shall be present during the lodging period. That would strike the need for staff to check if they are renting it only one week in May.

Vice Chair Colman said the different opinions are welcome and need to be expressed for the benefit of the public and City Council. We are here to recommend these requests.

Commissioner Finnegan moved to approve the SUP with the amendment on condition two, with the other conditions as presented.

Commissioner Finks seconded the motion.

All voted in favor of the SUP, with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Finnegan moved to approve the SUP with the amendment on condition two, with the other conditions as presented.

Commissioner Finks seconded the motion.

All voted in favor of the SUP, with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

- 4.j. Consider a request from David P. Miller for a special use permit per Section 10-3-40 (8) to allow for a short-term rental on the 25,850 +/- square feet property located at 957 Summit Avenue and identified as tax map parcel 49-B-8.

Attachments: [Memorandum](#)

[Extract](#)

[Site Maps \(2 pages\)](#)

[Application, applicant letter, and supporting documents](#)

[Public Hearing notice](#)

[Surrounding property owners notice](#)

[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling, zoned R-2

North: Single-family detached dwelling, zoned R-2

East: Single-family detached dwelling, zoned R-2

South: Single-family detached dwelling, zoned R-2

West: Agricultural uses located in Rockingham County, zoned A-2

The applicant is requesting approval of a short-term rental (STR) operation at 957 Summit Avenue. The principal structure on the property is currently a single-family dwelling. However, a second dwelling unit is currently being constructed that will make the structure a duplex for two dwelling units. The applicant desires to rent for STR one entire dwelling, which has seven accommodation spaces, to a single group of up to 12 persons. ("Accommodation space" is used here to mean any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they plan to be present in the second dwelling unit during the lodging period.

The property is located in the northwestern section of the City about 0.7-miles from the nearest arterial or collector street (Chicago Avenue and Mt. Clinton Pike) and 0.1-miles from the end of Summit Avenue, which ends in a cul-de-sac. Staff has learned from the applicant and from neighbors on Summit Avenue, that Summit Avenue receives pedestrian, bicycle, and vehicular

traffic from visitors who are not relatives or friends of neighbors on the street who visit this street for the views and because there is relatively low volumes of traffic the street is comfortable to walk and bicycle on. However, staff feels that adding one or more STRs in this neighborhood could change the character of the neighborhood with increased vehicle trips.

Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential environment is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Staff believes a STR is approved within this neighborhood could result in community instability because STRs introduce high turnover of different people who are unknown to the neighbors.

Staff believes that STRs should not negatively impact a community, an individual's quality of life, or an individual's often biggest investment: their home and property. Given the location of the property within this residential area of the City and the nature of the request, staff believes a business operation of this nature should not be promoted at this location and further believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval of the applicant's request to City Council, staff recommends the following conditions be placed on the SUP:

1. The site shall be the operator's primary residence.
2. An operator shall be present on the site during the lodging period within any dwelling unit.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than seven STR guest rooms or accommodation spaces.
5. The number of guests at one time shall be limited to a single-group of up to twelve people.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects neighbors by ensuring that there is on-site accountability by the STR operators. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to seven. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of STR guests to not more than twelve. Condition #6 requires that prior to beginning operations that

the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress.

Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent seven accommodation spaces within the structure for STR, the property would be required to provide seven off-street parking spaces unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Regardless, staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained his plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Vice Chair Colman asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

David Miller, 957 Summit Avenue, came forward to speak in favor of his request. My goal is to live in the home, all the time. In the main part, as well as the apartment when the main part is rented. I would like to have the flexibility to leave the house. I used to own Dave’s Taverna. Due to an undiagnosed illness, I lost my restaurants and my properties, except for this house. This is the only way that I can hold onto it at this time. I have gone to all my neighbors and met with all 25 neighbors, property owners. That is probably one hundred people. Maybe two out of a hundred said that they had concerns but would be willing to accept it if I was available. There is a lot of traffic on the street. It is a loop that people use to bike, to walk. People drive up there to look at the view and park to watch the city lights on the eastern side and the sunset on the western side. It is the reason why people go there. I do not believe STRs bring in additional traffic. There are long term renters, some of which are multi-families that have six or eight people renting from the same house, in which case they all have their own cars. That is six or eight cars. I am renting to one group at a time, which is one, two, or three cars.

Commissioner Finks clarified that the expectation for the requirement “operator shall be present” means that the operator would have to sleep there, not necessarily be there 24 hours a day.

Mr. Miller asked what would happen if something comes up and he cannot spend the night there. For example, if he has to pick his daughter up from New York, when she is in school.

Vice Chair Colman said those situations are circumstantial. Is that your primary residence? Would

you rather remove condition two which states that the operator shall be present during the lodging period?

Mr. Miller said he would leave it up to the Planning Commission.

Commissioner Finnegan said that there was a STR at the end of the cul-de-sac which was approved last month. There was a request in 2013 to turn this property into a Bed and Breakfast.

Mr. Miller said that when he lost the restaurants, he was trying to make some income, so he applied for a SUP for a Bed and Breakfast at that time. It had initial support from staff, until we had concerns from the neighbors. I then withdrew my application because I did not want to disrupt the neighborhood. What is interesting is that the person with the greatest concern just got a permit for a STR.

Commissioner Finnegan asked if there was any petition in opposition to the STR request as there was for the 2013 Bed and Breakfast request.

Mr. Miller said that there was not. The neighbors said that was different. I tend to agree that a Bed and Breakfast that would serve meals would be more intrusive. That is what was a little shocking when the recommendation was for denial. I think that things have changed. People are cautious. Condition eight is available to revoke a STR if it becomes a problem.

Vice Chair Colman asked if there was anyone else wishing to speak to the request.

Mr. Giannakaouros came forward in favor of the request. The principle has come up now that a neighborhood not wanting strangers around. It is not a good principle to guide your decision making.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Ms. Dang said noted that condition number five is different from the other conditions seen in other applications. This applicant is limiting the STR to a single group up to twelve people. That would be a single reservation.

Commissioner Finks moved to recommend approval of the SUP request with conditions, as amended.

Commissioner Ford-Byrd seconded the motion.

Vice Chair Colman called for a roll call vote on the motion.

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: Aye

Commissioner Whitten: No

Commissioner Finks: Aye

Commissioner Romero: Aye

Vice Chair Colman: Aye

Commissioner Finnegan asked why Commissioner Whitten voted against the recommendation.

Commissioner Whitten said it is the same concern that she shares with staff. Staff recommends denial due to concerns for the neighborhood and also, concerns beyond the ownership of this applicant to the next property owner that is going to put 12 lodgers in there. This could create a trend that would be dangerous for the neighborhood.

The motion to recommend approval with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

The Planning Commission recessed at 9:00 p.m.

The Planning Commission reconvened at 9:07 p.m.

Commissioner Finks moved to recommend approval of the SUP request with conditions, as amended.

Commissioner Ford-Byrd seconded the motion.

Vice Chair Colman called for a roll call vote on the motion.

- Commissioner Finnegan: Aye
- Commissioner Ford-Byrd: Aye
- Commissioner Whitten: No
- Commissioner Finks: Aye
- Commissioner Romero: Aye
- Vice Chair Colman: Aye

The motion to recommend approval with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Yes: 5 - Colman, Finnegan, Finks, Ford-Byrd and Romero

No: 1 - Whitten

Absent: 1 - Way

- 4.k. Consider a request from Katrina and Ernest Didot for a special use permit per Section 10-3-40 (8) to allow for a short-term rental on the 19,595 +/- square feet property at 845 College Avenue and identified as tax map parcel 125-A-16 and 17.

Attachments: [Memorandum SUP](#)

[Extract](#)

[Site maps](#)

[Application, applicant letter and supporting documents](#)

[Written public comment received June 10, 2019](#)

[Public Hearing notice](#)

[Surrounding property owners notice](#)

[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling and a second, non-conforming single-family detached dwelling; zoned R-2

North: Single-family detached dwelling fronting Hillside Avenue; zoned R-2

East: Across College Avenue, single-family detached and duplex dwellings; zoned R-2

South: Single-family detached dwelling; zoned R-2

West: Duplex and multi-family dwelling units, fronting Hillside Avenue; zoned R-2

The applicants are requesting approval of a short-term rental (STR) operation at 845 College Avenue. On the property are two single-family detached dwellings, one of which is non-conforming. The non-conforming single-family detached dwelling is located on the second floor of a detached garage. The applicants desire to rent for STR the non-conforming single-family dwelling. The dwelling has two-bedrooms for a total of two accommodation spaces and a maximum of four STR guests at a time. The property is the operator's primary residence and they will be present during the STR lodging period.

The property is located in the northwest area of the City, in the Park View area, about 0.5-miles from the nearest arterial or collector street (Chicago Avenue) and 225-feet from the end of College Avenue, which is a dead-end street.

It should be understood that this property was annexed into the City in 1983 as a single-family detached dwelling with the second, non-conforming dwelling above the detached garage. A non-conforming use is defined as "any lawful land, buildings, and structures and the uses thereof existing at the time of the enactment or subsequent amendment of this chapter which do not conform to the zoning prescribed for the district in which they are situated. Non-conforming land, buildings, and structures and the uses thereof may be continued only so long as: the then-existing or a more restricted use continues; such use is not discontinued for more than two (2) years; and, the buildings or structures are maintained in their then structural condition." In 1983 and still today, the R-2 district does not allow more than one single-family detached dwelling on a property. Duplexes are allowed if minimum lot size requirements are met. The non-conforming dwelling has been rented out to long-term tenants since its annexation into the City.

The applicants have described in their letter that they are able to provide up to six off-street parking spaces within the driveway for the STR. There is a separate driveway to accommodate parking for the applicant's principal dwelling.

This portion of College Avenue is unlikely to have pedestrian and vehicular traffic that is not from residents of the street, their relatives, friends, or other visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips. Staff also feels that approving a STR for this separate dwelling unit removes an available unit for long-term tenants from the City's housing stock.

Given the location of the property within this residential area of the City, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval of the applicant's request to City Council, staff recommends the following conditions be placed on the SUP:

1. STR accommodation shall be within either the principal dwelling or the non-conforming dwelling unit above the detached garage.
2. The site shall be the operator's primary residence.
3. An operator shall be present on site during the lodging period.
4. There shall be no more than two STR guest rooms or accommodation spaces.

5. The number of STR guests at one time shall be limited to four.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
7. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct additional structures on the property into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within additional buildings for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #3 protects neighbors by ensuring that there is on-site accountability by the STR operators. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to two. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of STR guests to four. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to "provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit." With a request to rent two accommodation spaces within the dwelling for STR, the property would be required to provide two off-street parking spaces unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Regardless, staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Vice Chair Colman asked if there were any questions for staff.

Vice Chair Colman asked how this request is different from the previous request. It is an apartment or unit within the same property.

Ms. Banks said this request is different. They are physically two separate buildings. That is what is making it non-conforming. In the R-2 zoning district, you may not have two single family detached dwellings on a parcel. You may have a duplex, if you have the lot area. The non-conformance is that the dwelling units are separated.

Ms. Banks added, I have provided you a letter of public input in support of this STR.

Commissioner Ford-Byrd said that the letter in support of the applicant. It praises their character and how they have operated in the past. It goes on to state that there is a single-family home behind the house and “when past or current owners were living in the house while renting out the apartment, there were no issues.” It does mention some issues that have occurred while others have been operating the home, but “in recent years, the homeowners are no longer in residence and there have been problems such as loud parties, neglected landscaping and even drug dealing”. I want to make sure that community members are understanding if you are coming forward in support of the current homeowner, you are also supporting those persons who may come behind them. I want to make sure that it is clear that as the applicant is going out and asking for support, make sure that they are understanding what it is they are coming to support.

Commissioner Finnegan said we have previously stipulated that “all accommodation spaces shall be within the principal structure”. Is the reason for that stipulation to prevent the removal of a rental unit from the housing stock? Are we calling this an accessory dwelling unit?

Mr. Fletcher said that they are both considered principal dwellings on the site. It is a non-conforming operation. What we are talking about is an accessory structure which may not be considered a dwelling unit. To be considered a dwelling unit you have to have living space, bathroom and kitchen. When we condition that it must be in a principal dwelling, it does not allow them to put an accessory structure on there, with a bedroom and a bathroom, and rent it out. We do have those situations where people have renovated the upper floor of their garage for their high school or college aged child.

Vice Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Katrina Didot, 845 College Avenue, came forward to speak to the request. One of staff’s concerns is regarding additional traffic and we are located on a dead end. I believe that with the STR we are decreasing traffic. We have rented it long term for as long as we have been there, which is about 16 years. We are committed to our neighborhood and hope to age in place. When we have rented it long term, it has always been to a couple or a couple and a child. There have been at least two cars, sometimes three. People coming and going every day with two or three cars, that is a lot more than when a small family comes with one car. They would come with a purpose in mind, such as a graduation or a wedding or visiting family. They are not coming and going in the same way. We believe it will decrease traffic.

There are many homes and vehicles on the street. It is a rather marginal neighborhood. We love it, but there is quite a mix of demographics, economic and ethnic. It is a melting pot. That is what we love about it, but it is a large property to maintain. Because it was annexed, I do not believe it ever had proper drainage, so we all got flooded. For us, it is important as supplemental income to

maintain our home. It is important, in a neighborhood like ours, to have the homeowners there maintaining their homes and their properties. Because it is such a mixed street, it could very easily turn into a rental only street that became a low income, not very nice neighborhood. It is marginal in some ways. The ability for us to be able to invest in our home in that way is very important.

I am a small business owner. I love the idea of being able to bring a new spending demographic into the City. When we limit people from using Airbnb, or those types of rentals, we are limiting what can come into the City as additional revenue, as well.

Commissioner Finnegan said he does not share the staff's concern about traffic or the neighborhood instability. Aside from the safety of guests, my main concern is about removing housing stock from a city where housing is becoming harder to find, renting or buying. Could you speak to that? It might be more income if you are able to have an Airbnb versus renting on a lease. Is that fair to say?

Ms. Didot said it is fair to say that the income can be more. I do not think that because there is a burden on the City for long-term housing that I need to carry that burden. I have provided that for the last sixteen years. My husband and I are moving into a situation where his father, who is 87 and has Parkinson's, will move in with us. We are extending our family, when we have just released our children who are now grown. For us, it is helping us to be able to do that for my in-law. You might say "that is not my problem", but I could also say that the housing problem in Harrisonburg is "not my problem". I share that burden, but this is a time where would like to be released to do it a little differently right now.

The Airbnb movement has allowed people in a different demographic to do things differently, spend their money, support neighborhoods. I went last year to Charlottesville to a conference. Ordinarily, I would get up early and come home that same night. I did not. I stayed Tuesday and Wednesday nights. I stayed in an Airbnb, and I could afford it. I spent Tuesday, Wednesday and Thursday in Charlottesville spending money. If our City is flourishing, then we should be figuring out our long-term housing concern. I would ask that you allow us to use the property that we have worked hard to maintain, over the years, to benefit us in a way that we can do what more families should be doing, and that is taking care of extended family.

Christopher James Robinson, 847 College Ave, came forward in support of the request. I have lived there for about three years. It is different there. I went from a trailer park to an environment where every year they have block parties. I get to meet all my neighbors. I value diversity. I like being around new people, unique people. I think this is a great opportunity for them. They are good people. I see them every day. What they do every day is a blessing. They have been a good help to me. Prior to here, I lost my trailer to a fire. Forrest Hundley, the prior owner, rented his house to me. When he sold the home, I did everything I could to own that home because of the neighborhood. The people come and go. Everyone is unique.

Poti Giannakaouros, Harrisonburg resident, came forward to address questions by Commissioner Ford-Byrd and Commissioner Finnegan. In this context of the economic model that might potentially motivate taking the units off the market, we heard, before the Community Criminal Justice Board a few days ago, an economic model that might fit in this type of situation from the McShin Foundation. They operate recovery homes where you could have a short term stay and that is an economic model. They touted a thousand beds in Richmond and touting Harrisonburg as a potential recovery destination. It would be great if this body could think about some of those

issues. Those are some the areas, rather than the disruption of neighborhoods, where we should be spending our effort and coming up with good policy.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said this is the first request where we are potentially removing housing stock, which was one of the primary concerns when we started talking about this two years ago.

Commissioner Whitten said most of the people we have spoken to tonight could have rented out one bedroom. It is not really different. It is just a free-standing apartment.

Commissioner Finnegan said renting a bedroom and renting an apartment are two different things.

Commissioner Finks said we are talking about single family, affordable housing. When we are talking about renting out a bedroom, you are not renting a bedroom to a family. You rent it to an individual. This structure seems like it is enough to handle a small family. I do think that that is the difference.

Commissioner Whitten said you just approved a house that could accommodate twelve people.

Commissioner Finks said it could have been turned into a long-term rental, as well.

Mr. Fletcher said once he converts it to a duplex, the answer is yes. Once Mr. Miller converts that home to a duplex, then there is no difference.

Vice Chair Colman said his concern is with units that are bought for the purpose of STR or are currently being rented and then turned into a STR. That effectively removes a unit that was used as long-term housing. In this case, we are defining it as a single-family home, but I do not know how much it is.

Commissioner Finks asked if there was a difference between potential and what already exists. In the sense that it is already a rental, rather than has a potential to be a rental.

Vice Chair Colman said when a unit that is being occupied by a family is taken out of the market specifically for this purpose, is what I have an issue with. In this case, you could interpret it that way. At the same time, this almost seems like it is part of the house in some way. At least, by perception.

Mr. Fletcher said any property that is zoned R-2 or R-3 that has enough lot area, if you approve a SUP for a STR in a single-family detached home, that does not preclude them from building an addition to that structure to add another unit.

Commissioner Whitten said this request worries her less because of where it is located. It worries me less because it is a mixed neighborhood and people are on board with the people who own the home and they are accepting of the idea in general. It is for four people, not twelve, which is less concerning.

Vice Chair Colman asked the applicant how she felt about the condition two "operator shall be present during the lodging period".

Ms. Didot responded said that she would prefer not to have the condition. We have a large extended family in the City. I do not see any time that there would not be someone to respond to concerns. I would like to be able to go away for the weekend and not have to stay home when my aunt lives a few houses down. I would rather remove it, but I do not want it to keep us from getting an approval.

Commissioner Whitten moved to recommend approval of the SUP, with conditions, as amended.

Commissioner Finks seconded the motion.

All members voted to recommend approval with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Whitten moved to recommend approval of the SUP, with conditions, as amended.

Commissioner Finks seconded the motion.

All members voted to recommend approval with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

- 4.I. Consider a request from Ian and Lena Steines for a special use permit to allow short-term rental at 60 Shenandoah Avenue.

Attachments: [Staff Report SUP \(60 Shenandoah Ave\) \(4 pages\)](#)

[Site Maps \(2 pages\)](#)

[Application, applicant letter, and supporting documents \(3 pages\)](#)

[Written public comment received as of June 6, 2019 \(1 page\)](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling, zoned R-2

North: Single-family detached dwelling, zoned R-2

East: Single-family detached dwelling, zoned R-2

South: Single-family detached dwelling, zoned R-2

West: Single-family detached dwelling, zoned R-2

The applicants are requesting approval of a short-term rental (STR) operation at 60 Shenandoah Avenue, which is located in a neighborhood south of Waterman Elementary School and north of West Market Street. The applicants desire to rent for STR a two-bedroom single-family detached dwelling with a maximum of four STR guests at a time. The applicants would not be present during the STR lodging period and there will be no STR operator present during the lodging period. The applicants state in their letter that they would be present at their primary residence on Portland Drive during lodging periods.

Staff believes that STRs should not negatively impact a community or an individual's quality of life or to a neighborhood individual's often biggest investment: their home and property. Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential environment is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Staff believes if a STR is approved within this neighborhood without a

condition to require that the site be the operator's primary residence, there is a greater chance that there would not be long-term permanent neighbors (either homeowners or long-term tenants) residing on the property, which could result in community instability because STRs introduce high turnover of different people who are unknown to the neighbors or could leave a house vacant for periods of time while the home is not being rented as a STR.

Additionally, at this location, allowing whole home rentals, where it is not the operator's primary residence decreases the housing stock available for long-term rentals and decreases the number of homes available for owner-occupied homeownership. While, some applicants may not consider themselves investors who are purchasing multiple homes to operate STRs, this home could be sold to an investor and the SUP and associated conditions would convey.

Staff also believes that without a condition that the operator be present during the lodging period, and thus no on-site accountability, that there is a greater chance of nuisance activities occurring on the property and negatively impacting neighbors.

Given the nature of the request, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval of the applicant's request to City Council, staff recommends the following conditions be placed on the SUP:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than two STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to four.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
5. The STR has no minimum off-street parking requirements.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to two. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #3 limits the total number of STR guests to not more than four. Condition #4 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. Condition #5 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to "provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit." With a request to rent two accommodation spaces within the dwelling for STR, the

property would be required to provide two off-street parking spaces unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. The property has a driveway with enough space for only one vehicle. Regardless, staff believes that if the request is approved, the applicant should be provided the flexibility to meet the off-street parking requirements by allowing STR guests to park on the existing driveway without requiring additional spaces. This would mean that additional guest vehicles would park on the public street. Condition #6 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained his plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Commissioner Finnegan said this is first request that we have received where there is no on-site operator.

Ms. Dang said it is a whole home rental and they do not live there at all.

Mr. Fletcher said it is the first request that has reached the Planning Commission. There were two that were withdrawn.

Vice Chair Colman asked if there were any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Ian Steines, 1170 Portland Drive, came forward to speak to his request. We have owned the property for several years. I know the neighbors very well. One of them wrote a letter on my behalf. I am frequently present at the property and maintain it with my son. The intention is to be more flexible with our use of the property. We have family that comes to it frequently. The reason that it is now furnished is because my father became ill and I wanted to have a place for my family to come visit. It becomes a better situation for me to have this spot. My primary residence does not house visitors well. This also works better for me when I work night shifts or late shifts. I am an emergency physician. If I go home at 2:00 a.m. or 7:00 a.m. this is a place where I can sleep. Occasionally, I can offer it to colleagues. The flexibility I want is for STR in addition to what I just described. As far as transmissibility, if there is an ability to revoke the STR, I am willing to revoke it. I am not interested in pursuing further investment or selling this as an investment. If revocation is something that you would consider, then I have no problem with that.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks asked staff to elaborate on the ability to remove a SUP from being purchased as such by another.

Mr. Russ said the identity of the owner is not relevant to general zoning principles, so we cannot make that a condition.

Commissioner Finks said there is no legal ability to set up a condition that the SUP would be revoked if the property were to change hands.

Commissioner Finnegan said there is no end date to a SUP. It is in effect in perpetuity.

Ms. Dang said the SUP would end if the operator ceased operation for two years.

Commissioner Finks asked if a misdemeanor charge would precede invoking condition six. Would that charge legally affect invoking condition six?

Mr. Russ said that zoning violations would not affect the SUP.

Mr. Fletcher said the condition is worded that if the STR become a nuisance, not just a zoning violation. It has to be specific to the STR.

Vice Chair Colman said those violations are property violations and are not related to the STR.

Mr. Fletcher said it would have to be associated with the use.

Commissioner Finks said he does not feel comfortable allowing a STR SUP for a property that will not be operator occupied. This opinion is not reflective of the current owner, but the fact that the SUP would be, in effect, in perpetuity. It concerns me that it is specifically stated in the conditions that it does not have to be operator occupied.

Commissioner Finnegan said he shares that concern.

Vice Chair Colman said SUPs are unique, but the reality is that they continue beyond the current property owner. It has the potential for the property to be used regularly as an Airbnb. It impacts the housing stock. At the same time, they are not renting it, so it is already not available. Those are unique situations. I do share your concern because that is the main issue that we have been pondering, the availability of houses. We can talk about affordable housing, but it is not just affordable housing. It is housing in general. There is a shortage of housing. It makes it difficult.

Commissioner Finnegan said someone could buy a house and let them sit there. There are three of those in my neighborhood that have been vacant for many years. If people can make more money from doing an Airbnb, then someone who is a working-class family is going to do that. I feel strongly that I cannot support this in its current form. This could convey and that would be a slippery slope that we would regret.

Commissioner Whitten said this is the very thing that we have spent hours in conversation about at this very table- the concern about affordable housing.

Commissioner Finks said they talked about this on the site visit. Not just the idea of affordable housing but houses that are not necessarily in the affordable housing range, but that you are taking housing off the market. Someone who is wanting to move from a starter home to a bigger house, would have that opportunity if we take those home off the market. People would not be able to move out of their starter homes.

Commissioner Finnegan moved to recommend denial of the request.

Commissioner Ford-Byrd seconded the motion.

All members voted to recommend denial of the request. The recommendation will move forward to City Council on July 9, 2019.

Commissioner Finnegan moved to recommend denial of the request.

Commissioner Ford-Byrd seconded the motion.

All members voted to recommend denial of the request. The recommendation will move forward to City Council on July 9, 2019.

- 4.m.** Consider a request from David Kraybill and Mary Hershberger for a special use permit per Section 10-3-40 (8) to allow for a short-term rental on the 42,500 +/- square feet property at 973 Smith Avenue and identified as tax map parcel 48-I-12.

Attachments: [Memorandum](#)
[Extract](#)
[Site maps](#)
[Application, applicant's letter and supporting documents](#)
[Written public input as of June 7, 2019](#)
[Public Hearing notice](#)
[Surrounding property owners notice](#)
[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling; zoned R-2
North: Vacant parcels; zoned R-2
East: Single-family detached dwelling, vacant parcels, across Smith Avenue, duplexes; zoned R-2
South: Vacant parcels; zoned R-2
West: Single-family detached dwellings fronting Summit Avenue; zoned R-2

The applicants are requesting approval of a short-term rental (STR) operation at 973 Smith Avenue. The applicants desire to rent for STR a five-bedroom single-family detached dwelling with six accommodation spaces and a maximum of 13 STR guests at a time. The property is currently not the applicant's primary residence; however, there is a long-term tenant residing in the home who will be present during the STR lodging period as the operator.

The applicants have informed staff that along with the five bedrooms in the home there is a couch in a living area that is intended for use as an accommodation space. It is the intent of the applicant to accept only guests who come as a single family or group, and not to rent out individual rooms. The applicants have described in their letter that they are able to provide seven parking spaces, five in the driveway and two in the garage, for the STR.

The property is located in the northwest area of the City, within Parkhill Subdivision, about 0.6-miles from the nearest arterial or collector street (Chicago Avenue) and 300-feet from the end of Smith Avenue, which ends in a temporary cul-de-sac. Although Smith Avenue does intersect with Mt. Clinton Pike (a major collector street) to the north, about 0.2-miles north from the subject property, there is no public right-of-way in place to connect the northern and southern sections of Smith Avenue to make it a through street; there is a private access that is only open to bicyclists and pedestrians.

This segment of Smith Avenue is developing and is unlikely to have pedestrian and vehicular traffic

that is not from residents of the street, their relatives, friends, or other visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips.

Given the location of the property within this residential area of the City, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval of the applicant's request to City Council, staff recommends the following conditions be placed on the SUP:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than six STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to a family or a group of not more than 13 individuals.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects neighbors by ensuring that there is on-site accountability by the STR operators. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to six. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of STR guests to a family or not more than a group of 13 individuals. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to "provide one parking space for each guest room or accommodation space, or as may be

more or less restrictive as conditioned by a special use permit.” With a request to rent six accommodation spaces within the dwelling for STR, the property would be required to provide six off-street parking spaces unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Vice Chair Colman asked if there any questions for staff.

Commissioner Finks said this is the type of scenario where the way condition two is currently written is important. I do not see the need to change the wording for this request. If it is not the owner that is going to be the operator, I think it is important that, in protecting against potential violations, the operator be present during the lodging period.

Commissioner Finks said that, knowing that the STR will convey to the next owner, we can change the language to the way that we changed the other requests.

Vice Chair Colman said that would make sense and it would be consistent.

Commissioner Finnegan stated that the language would be: “if the operator is not the owner, then the operator shall be present during the lodging period”. That way it is not too specific to this request.

Vice Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Mary Hershberger and David Kraybill, owners of 973 Smith Avenue. came forward to speak to the request.

Ms. Hershberger said they have long ties to Harrisonburg. We moved out of the area for work reasons. We have family and friends here. We moved back when we retired several years ago and built this house. Unexpected life events happened. Our daughter and her family live in the DC area. Their child had health concerns, so we moved to that area to help with our granddaughter. We want to stay there for a few years to help with her care. We keep this house and have access to it. If we rent it out long-term, we will not have access to it. If we do STRs, we can come back whenever we want to. We can have family gatherings here. It enables us to keep the house while we are temporarily away. We can then move back when this phase of life is over. When we built the house, we put in a mother-in-law suite for family and friends. Our daughter lived in there for a while. We have always had friends in it. Right now, the long-term renter and his wife are a young couple who are friends of ours. They are happy with the place and they want to stay. They will be on site. A STR will help us keep the house in a way that renting it out would not.

Mr. Kraybill said they rent out the in-law suite to friends. The rest of the house is vacant. We

never intended to rent this house. It does not remove any property from the market. Given the fact that rest of the house is vacant, it seems like a poor use of space for it to remain vacant. We are retired. We were educators all our lives. We did not have those incomes that some people have. We live on a fixed income. Given our family circumstances with our daughter and her family, the fact that we are living in the DC area and have this house, you can imagine that our expenses are substantial. Being able to use this house as a STR would give us some economic flexibility that we would highly value. Andrew, who lives in the house with his wife, will be the onsite operator. He is long-term. It is his primary residence and he will be there for onsite accountability. I love technology, so I have security cameras around the house. I monitor them frequently, according to Virginia law. We are able to surveil the house in that way.

The parking was addressed by Ms. Banks. We have plenty of parking. We take good care of the property and landscaping. The closest collector street is about 0.6 miles away from us, but almost half of that is industrial. It is not residential, so we are only about three tenths of a mile into a residential community. Smith Avenue is one of those subdivision streets that was built relatively recently. It is a wide street. It is difficult to imagine that the STR would create congestion. Our STR guest are mainly on weekends, so there is no increase in traffic during the week.

We met with residents. We care about being good neighbors. If any of our neighbors had any concerns, we would address them immediately.

Mike Trainum, 969 Smith Avenue, came forward in support of the request. We share a private access road to the property in question. I have written a letter and I will point out one paragraph. These are family groups that are visiting their kids at EMU or JMU, or they are cyclists. It has enhanced the neighborhood. My main point is that this type of property in the City accommodates visitors with lots of equipment such as bikes and kayaks or large families who would have a difficult time affording multiple hotel rooms. We need this type of property that well suits that purpose.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said this is one of the few pipe-stem lots that we have in Harrisonburg. It is a good use. If you did not have these pipe-stem lots, you would have a lot of large back lots. Because of the pipe-stem lot, there are lots of neighbors that adjoin, but it sounds like there is no opposition to this request.

Commissioner Finks said it is an interesting one because it is the only one we have had where the operator is not the owner.

Ms. Dang said it is the only one where that this their plan, but it could occur with any of the other applications.

Commissioner Whitten asked about the rental potential of this home.

Vice Chair Colman said all of these homes have rental potential.

Commissioner Finnegan said what we need to vote on is not this specific family. We need to be thinking about how this conveys moving forward.

Vice Chair Colman said with the conditions that we are applying, we are allowing that to happen in many of the previous ones.

Commissioner Finnegan said we do need to keep that in mind as we read the letters that are in favor of a specific family or a specific case.

Vice Chair Colman said we have to consider the consistency of our position. How this one might compare to the other ones, even though they are not related.

Commissioner Ford-Byrd made a motion to recommend approval of the SUP with conditions, as amended.

Commissioner Finks seconded the motion.

Vice Chair Colman called for a roll call vote on the motion:

Commissioner Whitten: No, due to the size of the property and the concerns as stated by staff.

Commissioner Finnegan: Aye

Commissioner Finks: Aye

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Vice Chair Colman: Aye

The motion to recommend approval of the SUP with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Commissioner Ford-Byrd made a motion to recommend approval of the SUP with conditions, as amended.

Commissioner Finks seconded the motion.

Vice Chair Colman called for a roll call vote on the motion:

Commissioner Whitten: No, due to the size of the property and the concerns as stated by staff.

Commissioner Finnegan: Aye

Commissioner Finks: Aye

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Vice Chair Colman: Aye

The motion to recommend approval of the SUP with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Yes: 5 - Colman, Finnegan, Finks, Ford-Byrd and Romero

No: 1 - Whitten

Absent: 1 - Way

- 4.n.** Consider a request from Sherwyn and Deirdre Smeltzer for a special use permit per Section 10-3-180 (6) to allow for a short-term rental on the 7,700 +/- square feet property at 294 Franklin Street and identified as tax map parcel 26-l-12.

Attachments: [Memorandum](#)
[Extract](#)
[Site maps](#)
[Application, applicant letter and supporting documents](#)
[Written public input as of June 7, 2019](#)
[Written public comment received 11 June 2019](#)
[Written public comment received June 11, 2019](#)
[Public Hearing notice](#)
[Surrounding property owners notice.pdf](#)
[PowerPoint presentation](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types; but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling; zoned U-R
North: Non-conforming duplex dwelling; zoned U-R
East: Single-family detached dwelling; zoned U-R
South: Across Franklin Street, single-family detached dwellings; zoned U-R
West: Single-family detached dwelling; zoned U-R

The applicants are requesting approval of a short-term (STR) operation in their home at 294 Franklin Street. The subject property is located along the northern side of Franklin Street, approximately 80-feet south from the intersection with Ott Street. The applicant has informed staff that the property is their primary residence and they will be present during the lodging period.

The applicants desire to rent for STR one accommodation space in their home that could accommodate two persons. (“Accommodation space” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation space is described as a third floor finished open attic space with a separate bathroom. The accommodation space has access through the home, as well as an exterior separate entrance via a staircase along the outside of the home.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent one STR accommodation space, the property would be required to provide one off-street parking space. As well, the ZO requires one off-street parking space for the single-family detached dwelling.

This section of Franklin Street restricts parking along the northern side of the street. Additionally, there is red zone permit parking on the southern side; therefore, a parking pass is required for

vehicles parking on the south side of Franklin Street Monday through Friday, 4am-6pm. The subject property has a driveway for off-street parking that is utilized for the single-family detached dwelling. The applicant states that the driveway can accommodate the additional required parking space for the STR operation.

If the request is approved, staff recommends the following conditions:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than one STR guest room or accommodation space.
5. The number of STR guests at one time shall be limited to two.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects the neighbors by ensuring that there is on-site accountability with operators being present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces to one. Condition #5 limits the total number of guests at one time to two. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. Condition #7 provides flexibility for the property owner to maintain the residential appearance of the property by not requiring them to delineate additional off-street parking spaces. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

Additionally, it appears that the attic was finished without obtaining building permits. The applicant is aware that a building permit and final inspection will be required by Building Code Officials prior to their inspection of guest rooms and accommodation spaces and means of egress.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicants sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Franklin Street is a local residential street that is heavily travelled by both, vehicles and

pedestrians. The subject property is walkable to the downtown area and James Madison University campus. It is situated approximately 740-feet from Mason Street, a major collector street and 1,250-feet from Main Street, an arterial street. The STR request is for one accommodation space of up to two guests, and the operator will be present during lodging periods.

Given the nature of the request, location of the property within the neighborhood, and staff's suggested conditions, staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff recommends approval of the special use permit request with the suggested conditions.

Vice Chair Colman asked if there were any questions for staff.

Commissioner Finnegan said he received an email regarding the request which he agreed to forward to staff.

Commissioner Whitten asked about egress from the third-floor attic space.

Ms. Banks said there is interior egress, but there is also a spiral staircase that goes up the side of the house. Referencing one of the slides, she pointed out the doorway and the spiral staircase.

Commissioner Whitten asked if the driveway is shared with the house next door. It is said that it is a shared driveway. My driveway is shared. I can use the driveway, but I cannot block the driveway. It is deeded that way. We had a garage that was deeded that way, half ours and half theirs. I live in the neighborhood and I have been told that the driveway is shared. If it is a shared driveway, you cannot park a car there to stay.

Ms. Banks said the house directly next door has its own driveway, here.

Mr. Fletcher said the property lines on the slides are not exact.

Ms. Banks said it would depend on what the agreement for the driveway is. The driveway can be extended to park vehicles in the rear of the property.

Vice Chair Colman asked if it is an access driveway or a driveway for parking. It depends on the agreement. Are we counting that as a parking space for the unit?

Ms. Banks said yes.

Vice Chair Colman said they would have to ask the applicant and ensure that they obtain accurate information.

Vice Chair Colman asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Deirdre and Sherwyn Smeltzer, 294 Franklin Street, came forward to speak to their request.

Ms. Smeltzer said that she supports the process that the City is going through and the formalizing of STR. It is beneficial to the City and bolsters the economic input to the City.

Mr. Smeltzer said they met with their neighbors and during that meeting they expressed appreciation for the transparency of how we went about the process. In conversation with them, we shared the eight conditions that staff has recommended. None of our neighbors are here this evening and we feel that, in good faith, we want to accept all eight of those conditions, including number two. That would be the expectation in the conversation that we had with our neighbors and we want to honor that.

In our earlier letter we included a request that the SUP not convey with the sale of the house. We

learned that it is not a workable condition for the City. If it is possible to have a SUP that would expire in ten years, we would advocate for that.

Ms. Smeltzer said that the property line does go about a foot into the driveway. We have lived there about eleven years. Years ago, we discussed the driveway with those neighbors. They have their own driveway and they had no problem with us using that driveway as our driveway.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan made a motion to recommend approval of the SUP with conditions, as presented.

Commissioner Ford-Byrd seconded the motion.

Commissioner Whitten said the letter from Mrs. Ehrenpreis is very compelling in terms of the historic nature of Franklin Street. We had a discussion and she stated some concerns about the nature of neighborhoods. I need to speak to the fact that she did not feel that it was a good thing.

Commissioner Finks said he can understand that perspective. This is the first request that is within walking distance of downtown Harrisonburg, where you are more apt to have people renting the space to have a fun weekend, whereas the others are probably going to have family, and less likely to have individuals. I can see how that concern would be raised based on its proximity. Collicello Street would also fall into that.

Vice Chair Colman said his concern was with the driveway. I understand that the neighbors do not have a problem with it, but we look at this beyond the current owners. We do not know if that relationship will still be there without a specific agreement. Perhaps most of the right of way is theirs. The SUP does not give any rights beyond the property rights to use that driveway, so you might not be able to. That is something we need to consider.

Ms. Banks said that the condition could be changed to say that the STR does not have to have off-street parking.

Vice Chair Colman said if they can use the driveway, that is fine, but if they cannot, I am ok with that.

Ms. Whitten said the parking is very limited on Franklin Street. You need to be very aware of that. Parking is only allowed on one side of the street. A lot of houses do not have off-street parking.

Vice Chair Colman said owners of the Airbnb will want to offer a parking space. I do not see an issue with them. I see an issue with us imposing that there be dedicated parking when we do not have authority to do that if that driveway is not available. That is my concern. I am not making a condition. I am making the comment. City Council or staff can look at it before the City Council meeting. That is my only concern. Beyond that, I have no concerns whether we say on-street or not require parking.

Vice Chair Colman called for a roll call vote.

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Commissioner Finnegan: Aye

Commissioner Finks: Aye

Commissioner Whitten: No

Vice Chair Colman: Aye

The motion to recommend approval with conditions passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Commissioner Finnegan made a motion to recommend approval of the SUP with conditions, as presented.

Commissioner Ford-Byrd seconded the motion.

Vice Chair Colman called for a roll call vote.

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Commissioner Finnegan: Aye

Commissioner Finks: Aye

Commissioner Whitten: No

Vice Chair Colman: Aye

The motion to recommend approval with conditions passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Yes: 5 - Colman, Finnegan, Finks, Ford-Byrd and Romero

No: 1 - Whitten

Absent: 1 - Way

- 4.o.** Consider a request from David Lee for a special use permit per Section 10-3-34 (7) to allow for a short-term rental on the 19,000 +/- square feet property at 1159 Nelson Drive and identified as tax map parcel 84-E-16.

Attachments: [Memorandum](#)

[Extract](#)

[Site Maps](#)

[Application, applicant letter, and supporting documents](#)

[Public Hearing notice](#)

[Surrounding property owners notice](#)

[PowerPoint presentation](#)

[Additional Conditions added 07/09/19](#)

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Low Density Residential. These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Single-family detached dwelling, zoned R-1

North: Single-family detached dwelling, zoned R-1

East: Single-family detached dwelling, zoned R-1

South: Single-family detached dwelling, zoned R-1

West: Single-family detached dwelling, zoned R-1

The applicant is requesting approval of a short-term rental (STR) operation at 1159 Nelson Drive. The applicant desires to rent for STR a four-bedroom single-family detached dwelling with a maximum of eight STR guests at a time. The property is not the applicant's primary residence and there will be no STR operator present during the lodging period.

The property is located in the southeast quadrant of the City, deep within the Ashby Heights and Ashby Estates neighborhood about 0.5-miles from the nearest arterial or collector street (Port Republic Road) and 422-feet from the end of Nelson Drive, which ends in a cul-de-sac. Nelson Drive is unlikely to have pedestrian and vehicular traffic that is not from residents of the street, their relatives, friends, or other visitors.

Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential environment is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Staff believes if a whole home STR is approved within this neighborhood at this location, there is a greater chance that there would not be long-term permanent neighbors (either homeowners or long-term tenants) residing on the property, which could result in community instability because STRs introduce high turnover of different people who are unknown to the neighbors or could leave a house vacant for periods of time while the home is not being rented as a STR.

Additionally, at this location, allowing whole home rentals, where it is not the operator's primary residence decreases the housing stock available for long-term rentals and decreases the number of homes available for owner-occupied homeownership. While, some applicants may not consider themselves investors who are purchasing multiple homes to operate STRs, this home could be sold to an investor and the SUP and associated conditions would convey.

Staff believes that without a condition that the operator be present during the lodging period, and thus no on-site accountability, that there is a greater chance of nuisance activities occurring on the property and negatively impacting neighbors.

Staff also believes that STRs should not negatively impact a community, an individual's quality of life, or an individual's often biggest investment: their home and property. Given the location of the property within this residential area of the City and the nature of the request, staff believes a business operation of this nature should not be promoted at this location and further believes that a STR at this location would have adverse effects on other residents in the neighborhood and on the overall housing options in the City and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval of the applicant's request to City Council, staff recommends the following conditions be placed on the SUP:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than four STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to a family of not more than eight or not more than two unrelated persons.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the

Pre-Operation Form when short-term rental guests are present.

5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to four. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #3 limits the total number of STR guests to not more than eight. Condition #4 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. The form requires STR operators to certify that STR accommodation spaces have the proper square footage for the number of STR guests planned, have a permanent heat source, have smoke detectors, have egress windows or exit doors, etc.

Additionally, it appears that the basement was finished without obtaining building permits. The applicant is aware that a building permit and final inspection will be required by Building Code Officials prior to their inspection of guest rooms and accommodation spaces and means of egress.

Condition #5 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to "provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit." With a request to rent four accommodation spaces within the dwelling for STR, the property would be required to provide four off-street parking spaces unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Regardless, staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

Condition #6 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained his plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Vice Chair Colman asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

David Lee, 304 Turner Ashby Drive, Bridgewater, came forward to speak to the request. This is my house. I built my house in 1992. It contains inside all my historical collection of Virginia history and documents and all kinds of items that my wife would prefer not to be in the house that she resides in. It also has my very extensive library. We use the house frequently, regularly. We have five small children at home. I already have two daughters that graduated from college. I will have seven, total. What we use this house for is to have a place where I can get away with my family. We cannot just be at home because my wife always works. There is always laundry and if I do not remove her from that situation, she will not relax. We spend our time there. We usually go to a movie and come back to the house. I usually have excursions with a couple of my kids at a time up there. I occupy that house a lot.

I have been operating this as a STR for quite some time. We have abided by the zoning ordinance of no more than two unrelated people. We have turned down more than half of the people who request to rent. One of the concerns that I have always had with the R-1 zoning district with the SUP is that it undoes that no more than two unrelated people in that neighborhood.

I think that affordable housing is important in our community. Having been in real estate for 35 years and having a property management company, there are times in this community when you need a STR for the people in this community who are transitioning between homes. They have just bought a house, but the other people have not moved out yet. They need a couple weeks of a furnished rental for a place to stay. Some of the guests that we have had have been primarily mothers and their sisters coming to take care of their daughters who has just had a baby. That has been one of our more common guests. Our other guests have been people who have come to visit their local family. This house is much more affordable for them to stay as a whole family than a hotel. There is a need for that type of housing in this market. We have to be careful when we are talking about affordable housing to put an awful lot of pressure on people who already own housing as to what they can do with it, when the City is in control of how many new units are allowed. The conditions that they place on developing those new units also has corresponding costs.

We also use the house with the real estate company to accommodate our clients who are coming into town for a few days to look at property. We have an agent in Manhattan right now and he has been bringing people down. They are interested in investing in Harrisonburg and our company puts them up in the house. Zoning will not change that as long as I do not charge for it.

I have some experience in how this has been operating. I have sent letters to my neighbors to let them know what was going on. In my conversation with the neighbor representative, he said that he is glad we are not doing a long-term rental because, the last time we did it many years ago, it was disastrous. The tenant would not mow the grass and did not take care of the house. The house was pristine for three years. I have not had any complaints. They did ask me one thing- to put the outside lights on a timer so that when the guests could not find the switch to turn them off, they would go off. I told them that I would. I am eleven minutes from the house. I do not like idea of staying at the house with someone I do not know. I have brought my representative Lisa Hawkins to speak on my behalf.

Lisa Hawkins, attorney with Flora Pettit, came forward to speak in favor of the request. There

has been some discussion on whether or not there can be time limits on a SUP. There is a difference of opinion in the legal community about that. There are some communities that say you can and some communities that believe that you cannot. The Virginia Code allows Boards of Zoning Appeals that have the authority to issue SUPs to impose time limits on those. There is not express authorization allowing a City Council or other governmental body to do that. Many jurisdictions will interpret that to mean that we cannot. Others say that it is a valid concern and it falls under the general authorization that they regulate, so they can. There are jurisdictions that interpret Virginia law to allow time limits.

In terms of this particular property, we do not agree that it is deep within the neighborhood. You exit I-81, take Port Republic Road, drive through all the retail and restaurants, turn left and look for the mail box. It is very easy to find. By my count, looking at the maps, you drive past around 25 houses. You drive past about 30 to get to this house. "Deep in the neighborhood" is a relative term. You have to consider how easy it is to find for people who are not familiar to the area. That is a relevant consideration. You have to consider not only the distance, but how many houses do you pass and how many people are on that street. I do not agree that if there is more traffic on the street, it will be less disruptive. It is probably more disruptive if someone who does not know where they are going is driving slowly trying to find an address on a busy street where there are many people walking and bicyclists, etc. such as some of the properties you were looking at earlier.

The root of the concern that you have with this application, having heard everything you are talked about today, is that it is not a primary residence. What is a primary residence? I do not think that it is defined in the City of Harrisonburg ordinance. If it is not, then the standard definition of a primary residence is that it is the place where you live most of the time. If you live there for half of the year, which is what the IRS would say, it is your primary residence. You could have people who are in their primary residence half the year; they are in Florida the other half of the year and they rent it out as a STR for the period of time that they are gone. I see no difference between that and what we are talking about here, except that instead of being an absentee landowner for a substantial part of the year, the owner is a local person who is available if there are problems and who uses it on a sporadic basis as a second home for their family, with their belongings in the property. When you add the condition about renting to a family with no more than two unrelated individuals, I do not see any distinction between what we are asking you to approve and things that you have already approved tonight, particularly because you removed the condition that the owner has to present at many of those properties, so they could be in Florida. What we would like to do is recommend that you consider an additional condition to this application that would address the concern about it lasting forever, assuming that you do not later conclude that you could impose a time limit. The condition would be something along the lines of: "The site shall be a secondary residence of the operator whose primary residence is within 30 miles of the site." The only person who could operate this SUP would be someone who lives within 30 miles and uses it as a secondary residence. They are using it on a regular basis, for personal occupancy and other personal use. Secondary residence is defined in the IRS code, just as primary residence is. It is the same as primary residence, only less than half of the year. This condition puts this one in a box that is similar, if not identical, to SUPs you have already approved this evening. It also fills a market need for larger STRs because most of the STRs you have recommended for approval

accommodate two or four people, with one or two bedrooms in a house. There is a lot of need for rentals that can accommodate families. The City would be shortsighted not to make sure that you are including some larger rentals in the mix. You are not going to find many of those for families that want to occupy a whole house.

Let us not lose sight of one of the major goals of the Comprehensive Plan which is to grow hospitality and tourism in the City by “encourage more visits and longer visits among target markets”. The types of rentals that Mr. Lee has had over the past several years with no complaints from the neighbors are exactly what that goal is seeking to promote, which is families who visit, eat at restaurants, spend money here, and enjoy the wonderful City that we all share.

Commissioner Finks asked that Ms. Hawkins restate the suggested condition.

Ms. Hawkins said “the site shall be the secondary residence of the operator whose primary residence is within 30 miles of the site”.

Commissioner Finks asked if they are formally requesting that the condition be considered.

Ms. Hawkins said yes.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten said this request is the same as the request on Shenandoah Avenue.

Vice Chair Colman said that it was similar. If we were to approve this request, we would have to ask City Council to take another look at Shenandoah. I am not advocating for that. It is an interesting argument.

Vice Chair Colman asked counsel for clarification regarding primary and secondary residences.

Mr. Russ reviewed the IRS definition of secondary residence. A secondary residence is a residence in which you live a portion of the year, not more than half, and you do not rent the home out for more than 300 days per year. At that point it becomes a rental unit.

Commissioner Finks asked if that would preclude a STR.

Mr. Russ said he could not imagine that many people would be renting a STR for 300 days a year.

Commissioner Finks asked if it would have to have a time limit for that condition to be considered. If we were to add second residence into a condition, would it automatically put that 300-day time limit on it? If it were rented more than 300 days, it would not longer be a second residence. Am I understanding that correctly?

Mr. Russ said the limit it would place is that they could rent the Airbnb for 299 days a year to continue to qualify as a secondary residence.

Ms. Dang asked if a person can have more than one secondary residence.

Mr. Russ said yes, they could.

Vice Chair Colman said he could buy and own many houses, occupy them for five days a year and call all of them my secondary residence. My intent is to give due attention to each one of these items and each one of these arguments. We need to consider each argument and see how it stacks up to our reasoning and our concerns with why we are regulating it.

Commissioner Finnegan said that the Planning Commission voted on a split decision (4-3) for option number two which was by right, except for in cases where it was not operator occupied. City Council went in a different direction. If we are going to be here to 11:00 p.m., instead of having this be by right, we can take each one. We are finding boundaries. Each house is different.

Each neighborhood is different. Each situation is different. With the split decisions tonight, we have fallen on different sides of where those boundaries are. I tend to agree with Commissioner Whitten that this falls in with the same category as Shenandoah Avenue. I am inclined not to support.

Vice Chair Colman said it is the same situation, but the argument was presented differently. I give credit to the argument. I am concerned that it can be a second residence even if it is rented for 300 days.

Commissioner Finks said he wanted to explore the suggested condition and see if it would change our thinking, but it is very similar to Shenandoah Avenue.

Vice Chair Colman said it is tied to the definition of secondary residence, which can be stretched.

Commissioner Finnegan made a motion to recommend denial of the request.

Commissioner Whitten seconded the motion.

All members voted in favor of the motion to recommend denial. The recommendation will move forward to City Council on July 9, 2019.

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All members voted in favor of the motion to recommend denial. The recommendation will move forward to City Council on July 9, 2019.

- 4.p. Consider a request from Nattida Samanukorn and Jason Young for a special use permit to allow short-term rental at 422 Cedar Street.

Attachments: [Staff Report SUP \(422 Cedar Street\) \(4 pages\)](#)

[Site maps \(2 pages\)](#)

[Application, applicants letter and supporting documents \(3 pages\)](#)

[Written public comment received as of June 7, 2019](#)

Withdrawn by the applicant.

This PH-Special Use Permit was withdrawn.

5. New Business - Other Items

Vice Chair Colman asked if there was any further new business.

Commissioner Finks asked if the Planning Commission would want to ask staff to permanently amend condition two, since that is the way the majority of our votes went.

Vice Chair Colman and Commissioner Finnegan agreed with the suggestion.

Ms. Dang clarified the condition is the professional opinion of the staff. The Planning Commission has the ability to amend it. You can ask us to consider it, but we may continue to recommend doing it if we still feel strongly about it.

Commissioner Whitten said she agrees with staff.

6. Unfinished Business

None.

7. Public Comment

None.

8. Report of Secretary & Committees**8.a. Proactive Code Enforcement**

Ms. Banks said for the month of May 2019, the proactive code enforcement program inspected the Purcell Park section of the City. Violations related to signage exclusively. The proactive zoning program for June 2019 will be directed toward the Pleasant Hill section of the City.

8.a.a. May 2019 Proactive Code Enforcement Report

Attachments: [May 2019 Report](#)

8.c. Rockingham County Planning Commission Liaison Report

Commissioner Finks said the Rockingham County Planning Commission had a change to a master plan requested by Preston Lake, LLC. They requested an amendment to the existing approved Preston Lake Master Plan to allow for a senior group home to be located to be located on a seven-acre portion of the parcel on the northwest corner, on the other side of Boyers Road. It was approved. On the agenda were three public hearings for ordinance amendments. Two of them were to amend the setbacks on B-1 General Business District and to amend verbiage regarding how contractor operations are permitted in B-2 neighborhoods. Both were tabled. They did take up an amendment to Rockingham County Code, Chapter 17, to eliminate minimum buffer area requirement in all zoning districts. In the Rockingham County Code, they had a buffer minimum between dissimilar zones, so that between agriculture and residential there had to be a 30-foot buffer. They were finding that it was creating problems where there were big swaths of land that could not be developed because there had to be a buffer between usages. They struck that language. They clarified that they did not get rid of any screening or vegetation that would be required between dissimilar zones, only the 30-foot buffer.

Mr. Russ said in the amendment with the setbacks with B-1, they are adding maximum setbacks. You would have to build a maximum distance, which becomes the drive aisle and one row of parking. That is something that we have wrestled with.

Commissioner Finnegan asked if the point of maximum setbacks was to increase density.

Mr. Russ said it related to massing and positioning buildings in relation to streets and sidewalks and where the parking ends up.

Ms. Dang said that our zoning ordinance has minimum setbacks, so if there is a 30-foot set back, you can build 100 feet away from the street. Maximums establishes that maximum distance, which is similar to what we have talked about with some of the other rezoning proposals that we have received where staff was trying to mass the buildings closer to the street to create pedestrian environments.

Commissioner Finnegan asked if that is something the Planning Commission would want to

consider.

Ms. Dang said it is on the list of things to consider. We will review that.

8.b. Board of Zoning Appeals Report

None.

8.d. City Council Report

Commissioner Romero said it was a very long meeting. City Council voted in line with recommendations of the Planning Commission.

Ms. Dang said it included only three of the four items that Planning Commission reviewed. Wyndham Drive was tabled because the applicants were out of town.

9. Other Matters

Commissioner Whitten asked if they could explore some remedies for the long meetings, such as limiting the number of items on the agenda, which they do in Norfolk, or setting a time to end the meeting at the beginning of the meeting.

Mr. Russ said with setting a time to end the meeting, you run the risk of having to re-run the advertisement for something that you do not get to. Someone submits their application for a SUP or a rezoning. We have 100 days from the date of our next Planning Commissioner meeting to act on the request. Norfolk sets a limit of nine items on one agenda. If you are person number ten, then it is pushed to the next meeting.

Ms. Dang said there are twelve applications to look at on the next agenda. Nine STR, one preliminary plat, one SUP for community buildings and one SUP to allow multifamily buildings in R-3.

Commissioner Romero said City Council had similar discussions. The consensus was that we are going to meet earlier for the meetings for which we have a larger agenda. I suggested we meet an additional day because after five hours, we are not so productive.

Vice Chair Colman said we could consider meeting two days, maybe not consecutive.

Commissioner Whitten said the Planning Commission used to meet twice a month.

Mr. Russ suggested once you hit eight agenda items, then you could split them in half.

Commissioner Finnegan said he is open to options. It is not fair to the applicants or anyone who wants to speak to a request, to expect them to be here until 11:00 p.m. or midnight is not reasonable.

Vice Chair Colman asked how they would establish one of these changes.

Commissioner Finks said amending the bylaws.

Vice Chair Colman said in that case, they would have to reconvene the bylaws committee. I am wondering if we need to set up a meeting to get that taken care of sooner than later.

Ms. Dang said that staff could come up with draft language.

Mr. Fletcher said staff knows in advance what items may be coming up. Another question is, is this going to continue?

Commissioner Finnegan said if this continues, I would want to request that City Council revisit the

decision to go with option number one versus option number two regarding how to regulate STRs.

Ms. Dang said we can consider that. For staff to be able to see and hear more discussion from you and how City Council ultimately votes on these could help better inform us to draft or amend the regulations that were the homestays and amend them to some form that we are hearing that City Council wants.

Mr. Fletcher said it is also about what the precedents that are being set. What is also nice is we are hearing conversations from people that otherwise would not have been interested in coming in to express themselves.

Commissioner Finnegan asked if it was a concern about workload and capacity for staff hours.

Mr. Fletcher said that it has been on occasions. The workload may get heavy for a few months. In 2006 and 2007, we had a heavy workload for months, then it went back to normal. We have projects that we are working on now. Funds for the rewrite of the Zoning Ordinance were in the budget approved by City Council. We have to take a step back and look at the big picture of where things are going.

Vice Chair Colman said we have forced people to come here and speak their opinion. They did not come before but now they are finding out that we do not agree with their request. Aside from that, should we amend our bylaws? I think we should. If we have a big load, we can break it up into two meetings per month. We should only do it when we have those big loads. Otherwise, I do not think that we want to be meeting twice a month.

Commissioner Finnegan said he likes the idea of trigger points; if we hit a certain number of items then it triggers an additional meeting.

Mr. Fletcher said that staff will investigate the options.

10. Adjournment

The meeting was adjourned at 11:14 p.m.

Henry Way, Chair

Nyrma C. Soffel, Secretary

NOTE TO THE PUBLIC

Staff will be available at 4:30 p.m. on the Tuesday before the next Planning Commission meeting for those interested in going on a field trip to view the sites on the next agenda.